
Costs Decision

Site visit made on 28 January 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2019

Costs application in relation to Appeal Ref: APP/L3625/W/18/3204097 Littleton Manor, Littleton Lane, Reigate, Surrey RH2 8LB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Matt Tarrant for a full award of costs against Reigate & Banstead Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for a proposed change of use from B8 storage/warehouse to residential dwelling(s).
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Decision

1. The application for an award of costs is refused.

Reasons

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appellant has submitted a large body of text copied from the PPG in support of his case but his concerns can be summarized as the local planning authority failing to produce evidence to substantiate its reason for refusal, and that it also provided information that has been shown to be manifestly untrue. The appellant submits that the Council's decision was both substantially and procedurally flawed in these respects.
4. The main issue in the appeal was whether the building in question was used for purposes falling within the B8 use class and whether any such use was unlawful. In order to establish this, the appellant submitted evidence in the form of a sworn statement by Peter Lukas. This states that commercial storage uses have been undertaken in the barn since 2011. It is supplemented by a letter from a local charity confirming that it stored material in the building.
5. In establishing whether or not a particular use is lawful the appellant does not need to prove matters 'beyond reasonable doubt' and the appellant's own evidence does not need to be corroborated by 'independent' evidence to be accepted. Thus, if the Council has no evidence of their own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason not to accept it. This should not however be interpreted as an unqualified requirement to accept the evidence presented. Instead, the evidence still has to be sufficiently precise and unambiguous and should therefore be scrutinised accordingly.

6. In this respect, the Council raised some legitimate concerns about the precision of the evidence, which I have outlined and discussed in my main decision. It also referred to some of its own evidence in the form of council tax and planning records. To my mind, the Council has not provided information that has been shown to be manifestly untrue. Notwithstanding this, the Council's principal concern is that even if the appellant's evidence was to be accepted, it does not demonstrate that a storage and distribution centre has endured for ten years. The Council are entirely correct on this point as the appellant's evidence only goes back as far as 2011. Therefore, it cannot demonstrate a B8 use spanning a continuous ten year period as required to render the unauthorized use immune from enforcement action and the barn subject to the permitted development rights conferred by Class P of the GPDO¹.
7. The appellant has referred to two appeal decisions in support of his case, both of which were subject to successful applications for an award of costs. In the Pooks Corner Farm decision the Council had specifically refused the prior approval application in the absence of a proper testing of the evidence and the granting of a Lawful Development Certificate (LDC). This was found to be unreasonable because the issuing of an LDC is not required to establish the lawful use of a building. Accordingly, this decision is not directly relevant to my deliberations, as the Council have not alleged that an LDC is required. The requirements of Article 3(5)(b) of the GPDO is not a matter addressed in the Partridge Farm decision and therefore this decision is not directly relevant to my assessment either.
8. Taking the above points together, I find that the Council properly considered the proposal and supported its findings with evidence and appropriate professional curiosity and therefore the Council's decision was not predicated on substantive or procedural failings within the meaning of the PPG. As such, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred.

Graham Chamberlain,
INSPECTOR

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)