
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 Reigate & Banstead Borough Council for a full award of costs against Mr Matt Tarrant.
 - 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.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. The PPG goes on to say that an appellant is at risk of an award of costs if the appeal had no reasonable prospect of succeeding.
3. The Council submit that the appeal had no reasonable prospect of succeeding because the evidence submitted does not establish the lawfulness of the alleged B8 use of the appeal building. The appellant argues that for the purposes of Schedule 2, Class P of the GPDO¹ he only needs to demonstrate that the building was used solely for a storage or distribution centre on the 19 March 2014 and for a period of at least 4 years before the date the development under Class P begins. However, the GPDO must be read as a whole and Article 3(5)(b) states that the permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful.
4. The unauthorised use of a building becomes lawful under s191(2) of the Act² where: '*(a) no enforcement action may then be taken.... because the time for enforcement action has expired....*' The time for taking enforcement action in respect of a material change of use is set out in s171B(3) of the Act and this states that '*no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach*'.

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

² The Town and Country Planning Act 1990

5. As a consequence of the above, it is necessary for Mr Tarrant to demonstrate that the B8 use of the appeal site was lawful on the 19 March 2014. In effect, that no enforcement can be taken by virtue of the use being in existence for 10 consecutive years. There is some debate as to whether it is necessary to demonstrate that the building was lawful on the 19 March 2014, in that the breach had occurred on or before 19 March 2004, or whether a ten year period including 19 March 2014 is sufficient, for example a period covering 2 January 2008 to the 3 January 2018 (which is the date the application for prior approval was submitted). The evidence presented does not cover the periods between 2004 and 2014 or 2008 to 2018. It only goes back to 2011. Therefore, regardless of whether the evidence is robust or not, it does not span a period sufficient to establish lawfulness irrespective of which period is used.
6. This is a complex area of planning and therefore some allowance should be made for this. However, the Council made Mr Tarrant aware of its concerns regarding Article 3(5) as it was a matter discussed in the Case Officer's report and again in the Council's appeal statement. Moreover, the appeal decision letter³, referred to by Mr Tarrant in his own evidence, references both Article 3(5) of the GPDO and explains the need to establish a consecutive ten year period in order to establish lawfulness⁴. It is therefore inexplicable that the Mr Tarrant submitted his application with evidence that does not span ten years and then chose to contest the appeal in spite of this being pointed out by the Council and contradicted by his own evidence. Mr Tarrant then failed to deal with this specific point in his appeal statement and only addressed it briefly when responding to the Council's application for an award of costs. The Partridge Cottage⁵ case referred to by Mr Tarrant should not have been relied upon to the extent it was as it does not deal directly with Article 3(5).
7. I therefore find that the appeal had no reasonable prospect of success and therefore its submission was unreasonable. As a consequence, the Council have been put to the unnecessary and wasted expense of defending its decision. Accordingly, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Matt Tarrant shall pay to Reigate & Banstead Borough Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mr Matt Tarrant, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Chamberlain,
INSPECTOR

³ APP/Y3940/W/15/3139579

⁴ See Paragraphs 7, 9, 10 and 11 of the Inspector's decision letter in particular

⁵ APP/C3620/W/18/3192716