

Costs Decision

Site Inspection on 13 June 2019

by Graham Self MA MSc FRTPI

Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 21 June 2019

**Costs application Relating to Appeal Reference APP/X0360/C/18/3218553
Site at: Coppid Hill House, Barkham Road, Barkham, Wokingham RG41 4TG**

- The application is made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
 - The application is made by Wokingham Borough Council for a full award of costs against Mr Mark Flaherty.
 - The appeal was made against an enforcement notice issued by Wokingham Borough Council. The breach of planning control alleged in the notice is: "Without planning permission the material change of use of equestrian building and curtilage to a dwelling".
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Decision

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

Procedural Matter

2. In paragraph 11.1 of their statement the council say their application for costs is made pursuant to Section 78 of the Town and Country Planning Act 1990. Section 78 of the 1990 Act does not apply to this case, but this is a minor point which does not affect the validity of the costs application.

Reasons

3. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The history of this site includes several attempts at obtaining planning permission for housing development on land east of Coppid Hill House, where the appeal site is located although involving a larger area than the appeal site. The attempts have included unsuccessful appeals, a key reason being the location outside the development limits of Barkham, the effect of the development on the character and appearance of the area, and related planning policy. As is pointed out for the appellant in the response to the costs claim, the circumstances surrounding the present appeal are different to the previous appeals, which involved numbers of dwellings encroaching into open land well beyond the appeal site. Converting what was first permitted to be built as stables into a dwelling is also not the same as building a dwelling in the first place. But the end result - a dwelling in the countryside - is similar. The thin end of a wedge is still a wedge.
5. Written representations from several local residents suggest that the building has never been used for stabling horses. There is also evidence that the building has been used as some kind of annex to Coppid Hill House, or perhaps at one time for

domestic storage. This suggests that the appellant has sought to achieve encroachment of residential development into the countryside through a step-by-step approach; and as I comment in my appeal decision, some aspects of this case raise suspicions of possible deliberate concealment. One such aspect is the way the building is laid out with "false" timber doors facing towards the main road.

6. In summary, it seems to me that this appeal has been pursued either as a speculative punt or as part of a planned ploy. There are clear policy-derived objections to the development. I agree with the council that the appeal had no reasonable prospect of success. I find that unreasonable behaviour resulting in unnecessary expense has been demonstrated and that an award of costs is justified.
7. The council's application for costs only relates to ground (a) of Section 174(2). I am limiting the costs order accordingly, although that may not make much difference to the actual amount involved, which is not for me to determine.

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 Mark Flaherty shall pay to Wokingham Borough Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with the appeal on ground (a) of Section 174(2) of the 1990 Act.
9. The applicant (Wokingham Borough Council) is now invited to submit to Mr Mark Flaherty, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

G F Self

Inspector