

Costs Decision

Site visit made on 5 December 2019

by Sandra Prail M.B.A., LL.B (Hons), Solicitor (non practising)

an Inspector appointed by the Secretary of State

Decision date: 6th January 2020

**Costs application in relation to Appeal Refs APP/W1525/C/19/3220562 & 3220563 and Appeal Refs APP/W1525/C/19/3220557 & 3220558
Land at Ash Tree Stud Farm, Main Road, Little Waltham, Chelmsford,
Essex, CM3 3PA.**

- 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 Mr G Weal and Mrs T Weal for a full or partial award of costs against Chelmsford City Council.
 - The appeals were against an enforcement notice alleging failure to comply with a condition and an enforcement notice alleging without planning permission the construction of a building.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of the appeal, costs may 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.
3. The Guidance provides that a Council is at risk of an award of costs if it fails to provide evidence to substantiate each reason for refusal at appeal.
4. The Appellants argue that the Council acted unreasonably in serving two enforcement notices. They say that there was no breach of condition and that the development had planning permission. They claim that the Council relied on inappropriate caselaw and wrongly claimed that a mezzanine required the grant of planning permission. They refer to a decision on appeal as evidence for their claim that the building was not used for unauthorised purposes and assert that the Council did not take this into account.
5. I have addressed the reasons for issue of the notices in my substantive decision and have upheld each notice. I do not consider that the Council's issue of the notices amounted to unreasonable behaviour. Their submissions before me were clear and they set out their reasoning with supporting evidence. The fact that the Council did not agree with the Appellants' grounds of appeal did not make their position unreasonable. The Council did not assert that a mezzanine floor was in all cases development but that in this case its construction was contrary to approved plans and changed the

nature of the development. I did not find their interpretation of caselaw to be unreasonable and it did not cause any unnecessary expense for the Appellants.

6. The earlier decision on appeal did not make a determinative finding as to the use of the barn. The Inspector's decision concerned the matter before him namely the effect of the development on the character and appearance of the surrounding area. The Council did not act unreasonably in taking this decision into account.
7. I do not find the Council to have acted unreasonably in issuing the enforcement notices and they provided evidence on appeal to substantiate their reasoning.
8. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. I conclude that the award of costs sought by Mr G Weal and Mrs T Weal against Chelmsford City Council is not justified. The application should be refused and there is no justification for a partial award.

S. Prail

INSPECTOR