



Costs Decisions

Site visit made on 15 September 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Costs application A in relation to Appeal Ref: APP/C3620/X/19/3243421 2 Milton Street, Westcott, Dorking, RH4 3PX

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mole Valley District Council for a partial award of costs against Mr R Bishop.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the implementation of planning use C3(dwelling).
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Costs application B in relation to Appeal Ref: APP/C3620/X/19/3243421 2 Milton Street, Westcott, Dorking, RH4 3PX

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Bishop for a full award of costs against Mole Valley District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the implementation of planning use C3(dwelling).
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Decisions

Appeal A

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

Appeal B

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

Reasons

3. The Planning Practice Guidance advises that 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.

Appeal A

4. The Council say that the appellant introduced new evidence after the decision had been made, despite having had meetings and communication with the appellant. The application was determined on the basis of the information provided at the time. The new evidence was introduced for the appeal, which the Council considers amounts to unreasonable behaviour. The Council say had the information been part of the application there may not have been need for

the appeal. In addition, the Council had to request information from the appellant.

5. I accept that the Council made its decision on the information before it and was not in a position to revise the certificate after the decision had been made and the only way for it to do that would be to have a new application. However, once the appeal is made, it is not unreasonable for the appellant to submit new evidence for the appeal if it is relevant. This commonly occurs. It does not make the Council's original decision necessarily wrong, but the Council should have given proper consideration as part of the appeal process to any new information. If that information showed that an LDC should be issued it was open to the Council to withdraw its opposition to the appeal and therefore speed the process up and avoid the appellant incurring further expense. Correspondence also shows that the appellant supplied a great deal of information
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated, and an award of costs is not justified.

Appeal B

7. If the applicant wished to be sure about whether something is lawful, then the only certain way was to apply for an LDC. An officer's say so, even in written form, will not stand as evidence of lawfulness. Therefore, the advice that an LDC should be obtained was correct.
8. However, the information submitted by the appellant, particularly regarding the provision of required services and blocking up of the window, which was fully evidenced at the time of the LDC application, should have been enough information to allow the Council to grant the certificate. I accept that there appears to have been some confusion with regard to the building regulation certificates and it was reasonable for the Council to form its own view on that. I also accept that the fact that another department has accepted the use does not necessarily mean that the planning use has changed.
9. The Council appears to have decided this as if it is only a change of use, but it was for conversion as well, and the provision of the services is an obvious and material operation in the process of conversion. I consider that the Council has interpreted the requirements to show commencement incorrectly. The appeal should not have been necessary, because of the material operations that had obviously occurred, and is well accepted as commencing a permission. So whether or not there was other less clear evidence the Council should have issued an LDC.
10. I therefore find 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 associated with the appeal.

Costs Order

11. 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 Mole Valley District Council shall pay to Mr R Bishop the costs of the appeal

proceedings described in the heading of this decision limited to those costs incurred in the appeal process; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. Mr R Bishop is now invited to submit to Mole Valley District Council, 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 Dudley

Planning Inspector