



Costs Decision

Hearing Held on 20 October 2020

Site visit made on 21 October 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

Costs application in relation to Appeal A: APP/J3530/X/19/3228391 and Appeal B: APP/X3540/X/19/3236963

The Stables, Mill Road, Badingham, Woodbridge IP13 8LF

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Zachary Ludgrove for a full award of costs against East Suffolk Council.
 - The Hearing was in connection with an appeal against in Appeal A the failure of the Council to issue a notice of their decision within the prescribed period and in Appeal B the refusal of an application for a certificate of lawful use or development for non-commercial use for stabling of four horses and ancillary storage..
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Decision

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

Preliminary Matter

2. The Hearing was in relation to three appeals. However, it was confirmed that the application for costs related only to Appeal A and Appeal B.

The submissions for Mr Zachary Ludgrove

3. The costs application was submitted in writing including a response to the Council's rebuttal response.

The response by East Suffolk Council

4. The rebuttal response was made in writing. No additional points were made orally.

Reasons

5. The Planning Practice Guidance (the PPG) 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.
6. An appeal for a lawful development certificate is determined on the facts of the case and relevant planning law. It is not to do with the planning merits of the development or the impact of the matter the subject of the appeal.

7. In a lawful development certificate appeal the burden of proof is on the appellant to demonstrate, on the balance of probabilities, that the subject of the appeal is lawful. The evidence has to be sufficiently clear and unambiguous to justify the lawfulness of what is sought.
8. Costs can only be awarded in relation to unnecessary or wasted expense at the appeal. Behaviour and actions at the time of the application can be taken into account in considering whether or not costs should be awarded.
9. The applicant considers that the Council should have issued a certificate on the basis of the evidence provided in the first application or the second application. The Council sought additional information late in the determination period and failed to ask for or agree an extension of time to determine the application. The second application sought to address the concerns raised by the Council in relation to the statutory declarations and the evidence in general. The applicant raises concerns about the procedural aspects of how the applications were dealt with. He considers that the Council had sufficiently precise and unambiguous evidence to grant a certificate in both applications and that there was a lack of engagement by the Council.
10. The Council considers it did engage with the applicant in the course of the applications and explained that it required further information in order to determine that the use was lawful. It acknowledges that further information was provided in the second application (Appeal B).
11. On 23 June 2020 the Council confirmed that it had decided not to defend Appeal A and Appeal B because it considered that further information on the use of the building had been provided as part of the appeals, which was considered sufficient to grant a certificate. It confirmed that if a new application was submitted, along with the information submitted for the appeals a certificate would be granted. In the light of the lack of defence of the appeals only about 30 mins of the Hearing was taken up with dealing with Appeal A and Appeal B.
12. The Council do not make clear in its rebuttal to the application for costs exactly what further information led to this reconsideration of the evidence and the conclusion that a certificate would be issued if a new application was submitted. While additional points were made during the course of the appeals, the substantive evidence remained the four statutory declarations and the planning statements' narratives. The 1 July 2019 statutory declarations included some additional photographs and clarifications, but these were not significant changes and were available at the time of the second application.
13. The PPG gives the failure to produce evidence to substantiate each reason for refusal on appeal as an example of unreasonable behaviour that may lead to an award of costs. This is the case in these appeals. The Council have chosen not to defend the deemed refusal on Appeal A and the reasons for refusal on Appeal B. They rely on statements that additional evidence has been produced but do not specify what elements of the appellant's case led them to decide not to defend the appeal.
14. In my view, the additional evidence and explanations provided about the use of the barn over the relevant period is not such that a certificate could not have been issued for the application in either Appeal A or Appeal B. The nature of the use was a low key non-commercial use for four stables and ancillary

storage. Evidence was produced commensurate with this low key use. The evidence, although not voluminous, was adequate to demonstrate, on the balance of probabilities, that the use had begun and had continued in excess of ten years. The Council had no contradictory evidence of its own at any stage in the consideration of the applications or the appeals. I therefore find that the Council acted unreasonably in relation to both Appeal A and Appeal B and this led to the wasted expense of submitting the appeals, preparing written evidence and 30 minutes of the Hearing sitting time.

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified in relation to submitting the appeals, preparing written evidence on Appeal A and Appeal B and 30 minutes of the Hearing sitting time.

Costs Order

16. 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 the East Suffolk Council shall pay to the Mr Zachary Ludgrove the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the preparation of the evidence for both Appeal A and Appeal B and 30 minutes attendance at the Hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to the East Suffolk 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.

Hilda Higenbottam

Inspector