
Costs Decision

Inquiry Held on 22 March 2021

Site visit made on 30 March 2021

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 8 June 2021

Costs application in relation to Appeal Refs: APP/Q3115/C/19/3228752 & 3228754

Land at The Copse, Mill Lane, Kidmore End, RG4 9HA

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by South Oxfordshire District Council for a partial award of costs against Mrs Penney Holley.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use to a mixed use comprising use as a venue for the holding of wedding ceremonies, receptions and other organised events, commercial leisure accommodation, and residential use, and against an enforcement notice alleging the erection of a dining platform and timber, glass and canvas marquee structure.
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Decision

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

Reasons

2. The costs application and response were made in writing. Briefly, the Council seeks its costs in preparing for and appearing at a public inquiry as opposed to an informal hearing, which it says would have been the appropriate procedure if ground (d) in particular, but also grounds (b) and (c), had not been pursued. It claims that pursuing those grounds amounted to unreasonable behaviour.
3. In the alternative, and also on the basis of unreasonable behaviour in pursuing grounds (b), (c) and (d), it seeks the costs of preparing evidence to address those grounds, or the costs of the time spent on those grounds at the inquiry. In the main, the application concerns the notice alleging a material change of use.
4. As noted in the decision, ground (c) was withdrawn, and this was before the substantive inquiry¹. It was brought on the basis that planning permission for stables and a manège granted permission for a use within Use Class D2 of the Use Classes Order, so that other uses within Use Class D2 were also permitted, such as use of the land for wedding ceremonies and receptions. It was recognised that this was not a valid argument, but an element of this argument remained in play under ground (b). This was that, in essence, uses grouped within Use Classes were of the same character, and that argument carried over into the case on ground (d). It was not a strong argument, but it was not so hopeless as to be unreasonable.

¹ The Inquiry opened briefly in October 2020, but was adjourned without hearing evidence.

5. Ground (b) then was concerned with the accuracy of description of the development and of the prior use, with a view no doubt to the ground (d) case, which was based around materiality, that is that the later uses were not materially different from the earlier ones, and what appeared as relatively minor changes in the description might have assisted that argument. Again, It was not a strong argument, but it was not so hopeless as to be unreasonable.
6. I am satisfied that ground (c) was withdrawn in good time, and that the arguments put under grounds (b) and (d) were not so devoid of merit as to amount to unreasonable behaviour. It follows that the conditions necessary for an award of costs, that is that the unreasonable behaviour of one party caused the other unnecessary or wasted costs, have not been demonstrated.

Paul Dignan

INSPECTOR