



Costs Decisions

Site visit made on 30 June 2021

by Simon Hand MA

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

Decision date: 26th July 2021

Costs application A in relation to Appeal Ref: APP/X0360/C/20/3262642 Westwood Yard, land to the north west of Sheerlands Road, Arborfield RG40 4QX

- 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 Colin Ray for a full award of costs against Wokingham Borough Council.
 - The appeal was against the issue of an enforcement notice alleging the material change of use of land from agricultural use to use as a builder's yard.
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Costs application B in relation to Appeal Ref: APP/X0360/C/20/3269351 Westwood Yard, land to the north west of Sheerlands Road, Arborfield RG40 4QX

- 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 Wokingham Borough Council for a partial award of costs against Mr Colin Ray.
 - The appeal was against the issue of an enforcement notice alleging the material change of use of land from agricultural use to use as a builder's yard.
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Decisions

Application A Made by Mr Ray -3262642

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

Application B Made by Wokingham Council - 3269351

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

Appellants Claim - 3262642

3. The Council issued two notices in September 2020 both of which were appealed, with references 3262642 and 3262643. The appellant pointed out the first notice (subject to appeal 3262642) covered land where the matters alleged had recently been found to be lawful by the issue of an LDC. The Council withdrew the notice and reissued it with a different plan attached. The appellant withdrew appeal 3262642 but made another appeal against the new notice (appeal reference 3269351). Both this appeal and the original 3262643 were determined and refused.

4. I agree with the Council that they did not really need to withdraw the notice, as legal rights cannot be taken away regardless of where the red line is on the plan, but they did so in order to avoid confusion. The new notice was essentially unchanged except the area of land affected was reduced, so the arguments were no different. The appellant's appeal against the new notice was essentially the same as against the withdrawn notice, no actual wasted effort has been identified, so it is difficult to see how any wasted costs have been incurred.
5. I do not consider there has been any unreasonable behaviour on the part of the Council that has led to wasted or unnecessary expense and an award of costs is not justified in the circumstances.

Council's Claim – 3269351

6. 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.
7. The Council's claim concerns the ground (a) of appeal 3269351. The notice alleged a material change of use of the land to a builder's yard, the ground (a) appeal thus sought to argue this was acceptable. However, in 2020 an application to regularise the use of the disputed area of hardstanding and several buildings on the lawful area of hardstanding was refused. The subsequent appeal was also refused in December 2020¹. The Council wrote to the appellant to warn them if they pursued a ground (a) appeal against the enforcement notice the Council would seek a costs award.
8. The appellant argues the ground (a) appeal was materially different to the previous planning appeal in that a noise survey and an arboricultural report were provided. However, despite being different the ground (a) appeal still had no chance of success. The issues had all been discussed in detail by the previous Inspector, very recently. The Inspector had found three main objections. Firstly the site was an important green wedge in between the new housing and had been identified as green open space in the SDL that informed the redevelopment of the Aborfield Garrison and the Inspector concluded the unlawful area of hardstanding was harmful to the character and appearance of the area. The Inspector went on to find that noise and disturbance was also an issue and there may be harm to protected trees as there was no "Arboricultural Impact Assessment in accordance with BS5837:2012, or any other substantive evidence to the contrary".
9. The new noise survey sought to deal with the noise and disturbance issue. Although I disagreed that it did so, it was a properly carried out survey and did raise arguable points. The tree survey however was wholly inadequate and did not provide any surety that no trees were being harmed. Finally, there could be no response to the countryside objection as the location of the site cannot change. The agent's representations simply argued the opposite of the Inspector's conclusions. In my view two main objections to the development remained and there was consequently no chance of success of the appeal.

¹ APP/X0360/W/20/3255736

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 partial award of costs is justified.

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 Mr Colin Ray 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 ground (a) appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

Inspector