
Costs Decisions

Site visit made on 30 August 2022

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2022

Costs application 1 in relation to Appeals Ref: APP/M0655/C/22/3292387 & 3292388

2 Brookvale Close, Burtonwood and Westbrook, Warrington, WA5 4LP

- 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 Ms. Phaedra Wilkinson and Mr. Thomas Rayment for a partial/full award of costs against Warrington Borough Council.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of the dwelling to include dog keeping and breeding.
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Costs application 2 in relation to Appeals Ref: APP/M0655/C/22/3292387 & 3292388

2 Brookvale Close, Burtonwood and Westbrook, Warrington, WA5 4LP

- 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 Warrington Borough Council for a partial award of costs against Ms. Phaedra Wilkinson and Mr. Thomas Rayment.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of the dwelling to include dog keeping and breeding.
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Decisions – both applications

1. The applications for awards of costs are refused.

Preliminary Matter

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The applications were made in writing and therefore there is no need to rehearse the detailed points made.

Application 1

Reasons

3. The applicants contend that a full/partial award of costs is justified because if the Council had requested inspection of the property or sought to communicate with them as to the alleged breach of planning control the appeal could have been avoided altogether or the issues to be considered could have been narrowed. They also consider that the Council has provided information that is manifestly inaccurate or untrue and has failed to enter into negotiations prior to issuing the enforcement notice.

4. It appears that the information that the applicants consider is inaccurate or untrue is within the reasons for issuing the notice. Within that section of the notice it states, *'the Council has not been able to bring about resolution of the breach of planning control through negotiation with the property owner'*. The applicants maintain that the Council has not *'attended at the Property nor have they sought to discuss this matter with'* them.
5. However, the Council have cited a number of items of correspondence and have stated that Planning Enforcement and Environmental Health Officers have undertaken site visits to the property. The Council initially contacted the applicants, by letter addressed to the occupiers, on 7 January 2019 asking if they were considering running a dog related business. Ms. Phaedra Wilkinson responded stating that she was not considering running a dog-related business from her home and the Council replied to say that the case would be recommended for closing.
6. The Council wrote to *'The Occupier of 2 Brookvale Close'* again on 2 July 2020 informing them that they had been advised a dog breeding business was being run on the site and asked for a response within 7 days. No response was received and the Council issued a Planning Contravention Notice (PCN) on the 29 July 2020. However, it appears that the PCN was addressed only to Thomas Rayment and therefore Ms. Wilkinson was not obliged to respond to it. The Council have also stated that a letter was sent to the applicants on 9 August 2019 by its Environmental Health Department in relation to barking dogs and no response was received to that letter. It also states that in September 2021 an officer/s from Environmental Health visited the site and discussions were undertaken with the applicants with regards to the number and breed of dogs that were at the site.
7. The applicants have not disputed the above information provided by the Council and there is no dispute that dogs were kept at the property. I acknowledge that there is limited evidence of the Council's attempts to contact and discuss the issues with the applicants. Nevertheless, within my substantive decision I have found that, on the balance of probability, the evidence strongly indicates the dwelling, 2 Brookvale Close (No 2), and its grounds was being used for the keeping and breeding of dogs at the time the enforcement notice was served.
8. Whether a breach of planning control has occurred, in respect of a material change of use of the dwellinghouse, involves judgments in relation to matters of fact and degree that are relatively complex. I have agreed with the Council that on the balance of probabilities, express planning permission is required for the making of a material change of use to a mixed use as a dwellinghouse and dog keeping and breeding. Even if additional correspondence and discussions had been possible between the Council and the applicants it is reasonable to consider that the issues to be determined would have remained similar to those before me and the need for the appeal would not have been avoided. Consequently, the Council did not behave unreasonably and its behaviour did not cause the applicants to incur unnecessary expense. No award of costs is therefore justified.

Conclusion on application 1

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Application 2

10. The Council contends that a partial award of costs on procedural grounds is justified as it considers that information that is manifestly inaccurate or untrue has been provided by Ms. Wilkinson and Mr Rayment (the appellants), that they have deliberately concealed relevant evidence and have failed to co-operate with the Council.
11. Evidence submitted as part of the appeal process on behalf of the appellants with regard to the ground (b) appeal states that they have never sought to utilise the property for the breeding of dogs. However, it is not clear if that statement is made in relation to dogs being bred at the property as part of a business. Moreover, within a defence statement relating to Mr Rayment, made to Liverpool Crown Court, it is stated that *'the accused and his partner operated a legitimate, successful business breeding and selling expensive pedigree American Bulldog puppies as well as supplying semen to other breeders for artificial insemination'*. As stated above I have found that, on the balance of probability, the evidence strongly indicates that the dwelling, 2 Brookvale Close (No 2), and its grounds was being used for the keeping and breeding of dogs at the time the enforcement notice was served. The appellants did not respond to the Council's letter of 2 July 2020 and the PCN was not returned. However, the PCN was sent to Mr Rayment and he does not appear to have been in residence at No 2 when it was delivered. Ms. Wilkinson was not obliged to complete it as it was not addressed to her.
12. Moreover, even if they had responded to the letter of the 2 July 2020, it is more likely than not that their stance in relation to dog breeding at the property and whether it constituted a breach of planning control would have been maintained. In addition, as stated previously, whether a breach of planning control has occurred, in respect of a material change of use of the dwellinghouse, involves judgments in relation to matters of fact and degree that are relatively complex. I have agreed with the Council that on the balance of probabilities, express planning permission is required for the making of a material change of use to a mixed use as a dwellinghouse and dog keeping and breeding. Even if additional correspondence had been possible between the Council and the appellants it is reasonable to consider that the enforcement notice would still have been issued and the need for the appeal would not have been avoided. Consequently, there is little to indicate that the appellants' behaviour has caused the Council to incur unnecessary expense. No award of costs is therefore justified.

Conclusion on application 2

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D. Boffin

INSPECTOR