
Costs Decision

Site visit made on 12 December 2022

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Costs application in relation to Appeal Ref: APP/T2405/C/22/3294562 The Mill, Croft Hill Road, Huncote, Leicestershire, LE9 3GR

- 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 Mr Alastair Brooks for a full award of costs against Blaby District Council.
 - The appeal was against an enforcement notice alleging the material change of use of the land to a mixed use of Class E(g)(ii) (the research and development of products and processes) and Class B8 (Storage).
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Decision

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

Reasons

2. The appellant submits that the Council framed the alleged breach incorrectly, despite the guidance of an appeal decision regarding an earlier enforcement notice that there was no B8 use on site. It failed to carry out diligent investigations to establish the true facts of the case. The Council failed to substantiate its reasons for issuing the notice on the grounds of location, character and appearance, flood risk, highway safety and residential amenity.
3. In response, the Council submits that the previous enforcement notice was quashed due to the lack of inclusion of the C3 residential use and it amended the site boundary in response to the previous Inspector's comments. It has visited the site numerous times. The Council provided a clear and concise justification of its case and relevant information was available on-line, where not provided by the Council.
4. 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.
5. Although the Council is correct in stating that the previous Inspector quashed the previous enforcement notice due to the lack of inclusion of the C3 residential use, nonetheless, she gave clear guidance in para.8 of her decision that she considered there was no B8 use. This is an opinion with which I agree, having seen the site and read the representations, and I have seen no evidence of any substance from the Council to justify its inclusion in the revised notice. With the benefit of this guidance, and with the opportunity to investigate the use in greater depth, it was therefore unreasonable for the Council to include the B8 use and to require the appellant to address it.

6. The previous Inspector quashed the notice before going on to consider any of the grounds of appeal (a), (b), (d), (f) & (g). In my determination of the appeal, I only needed to consider grounds (b) and (d) before coming to my decision to correct the notice, allow the appeal and quash the notice.
7. My appeal decision turned on the interpretation of the *Murfitt*¹ principle, in which I had to decide whether the development was primarily a material change of use or operational development. In the end, my view was that it was the latter, and that the 4 year period applied. On that basis, the appeal on ground (d) was bound to succeed. However, although I disagreed with the Council on its interpretation of *Murfitt* and similar cases, the case put forward by the Council on this matter was sufficiently rational for me to conclude that its approach to this case was not unreasonable.
8. I note the appellant's criticism of the Council's case on ground (a). Whilst I didn't need to determine the appeal on this ground, I shall go on to consider the matters arising from this.
9. In setting out its case, the Council addressed all the principal issues of location, character and appearance, flood risk, highway safety and residential amenity, backed by reference to the relevant development plan policies and national guidance. The mis-application of Class B8 to the use does not appear to have undermined the Council's case on ground (a) as this focused on the use as actually observed, on its present scale, rather than a hypothetical expansion of the alleged mixed use.
10. The Council appears not to have mis-applied Policy DM3 as the site is beyond the edge of the settlement and there was no clear indication that the business could not be occupied on suitable alternative sites. The issues of character and appearance were covered with reference to landscape character assessments. On this and the remaining issues, I found the Council's submission to be sufficiently cogent and comprehensive such that I would have had sufficient information to have come to an informed decision had I needed to.
11. In conclusion, I find that the Council acted unreasonably in alleging a mixed use including Class B8 and that this led to the incurring of unnecessary expense by the appellant in addressing ground (b).

Costs Order

12. 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 Blaby District Council shall pay to Mr Alastair Brooks, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing the appeal on ground (b); such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Blaby 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.

B.S. Rogers Inspector

¹ *Murfitt v SSE and Another* [1980] P & CR 254