

---

## Costs Decision

Site visit made on 29 November 2022

**by J Moss BSc(Hons) DipTP MRTPI**

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

**Decision date: 1<sup>ST</sup> FEBRUARY 2023**

---

**Costs application in relation to Appeal Ref: APP/C3620/C/21/3269098**  
**Land known as Springfield, Church Lane, Headley, Epsom, Surrey**  
**KT18 6LG**

- 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 Miss Kimbillie Breakspear for a full award of costs against Mole Valley District Council.
  - The appeal was against an enforcement notice alleging the material change of use of a stable building to a self-contained dwelling house.
- 

### Decision

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

### The submissions

2. The reasons given for the costs application are summarised as follows:
  - The Council failed to consider the evidence before them and issued an enforcement notice when it was not expedient to do so.
  - An enforcement notice was issued prior to the determination of the appeal<sup>1</sup> relating to the application for a lawful development certificate (LDC). The applicant was, therefore, made to make the appeal against the enforcement notice so that it would not come into effect.
  - The Council accept that the material change of use took place in July 2015, yet the notice alleges that the material change of use had not taken place within the requisite four year period.
  - The reasons for the issue of the enforcement notice refer to policies that relate to the erection of a dwelling, rather than a material change of use as alleged in the notice.
  - The applicant has been disadvantaged as the Council's statement refers to the limited time between the erection of the building and change of use, suggesting that this is a matter relevant to the ground (a) appeal. The reasons for the issue of the notice do not mention this.
3. I have had regard to the Council's response to the costs application and the applicant's final comments in reaching my decision.

---

<sup>1</sup> Appeal reference APP/C3620/X/20/3259376

## Reasons

4. Paragraph 030 of the Planning Practice Guidance on Appeals (the PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. Paragraphs 047 and 049 of the Appeals PPG provides examples of unreasonable behaviour on the part of the local planning authority. These include:
  - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
  - failure to produce evidence to substantiate each reason for refusal on appeal; and
  - not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
6. Although these examples relate more to the determination of appeals made under section 78 of The Town and Country Planning Act 1990 as amended (the 1990 Act), the principles of these can be applied to this case.
7. The advice in the Planning Practice Guidance document on Lawful development certificates (the PPG) was relevant in this case. This advises that an LDC application should not be refused if the applicant's evidence is sufficiently precise and unambiguous, **and** there is no evidence to contradict or otherwise make the applicant's version of events less than probable.
8. For the applicant to succeed on the ground (d) appeal, it was necessary for her to demonstrate with precise and unambiguous evidence that, not only was the date of the breach more than four years prior to the issue of the enforcement notice, but that the use had continued uninterrupted for a period of four years or more beginning with the date of the breach. The Council may have acknowledged that the material change of use first took place in July 2015. However, it made the case that the evidence submitted by the applicant was not sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use had continued uninterrupted for the required period. As this was the main consideration in the ground (d) appeal, I cannot find that the Council acted unreasonably with regard to its case on the matter of the lawfulness of the development, despite there being no dispute between the parties that the material change of use first took place in July 2015.
9. The Council's decision to issue the enforcement notice followed its refusal of the LDC application. I acknowledge that the Council's evidence to contradict the applicant's version of events (as set out in her evidence submitted with the LDC application) was limited. However, in refusing the application the Council gave robust reasons for finding that the applicant's evidence was not sufficiently precise and unambiguous. Even with the benefit of the additional evidence submitted by the applicant with her appeal, the Council's case made in response to both appeals highlights matters on which my decision could have turned. Indeed, I had regard to the Council's concerns with the water

supplier's bills in concluding that this evidence provided little support for the applicant's case.

10. Ultimately, I have not agreed with the Council in my determination of the ground (d) appeal. My decision was, however, finely balanced. Accordingly, and for the reasons given above, I do not find unreasonable behaviour on the part of the Council with regard to the evidence it provided to oppose the applicant's case.
11. Section 172(1) of the 1990 Act states that a local planning authority may issue a notice where it appears to them that there has been a breach of planning control; and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The Council is entitled to exercise its powers under these provisions.
12. In this case, the Council had considered and refused the LDC application, but were alive to the fact that the use of the stable building as a dwelling continued without the benefit of planning permission. Despite the appeal against the decision on the LDC application, it was reasonable for the Council to exercise its powers in order to stop a use that it had found to be unlawful. As I note above, there was some merit in the Council's case with regard to the lawfulness of the development that is the subject of the notice. Accordingly, I cannot conclude that the Council issued an enforcement notice where there was no hope of defending any appeal made against it.
13. It therefore follows that the expense of making an appeal against the notice would not have been unnecessary or wasted, regardless of the grounds under which it was made. This includes the fee for the deemed planning application that comes with a ground (a) appeal. After all, when making an appeal against an enforcement notice, it is for the appellant to choose the grounds under which they appeal. There is, therefore, no merit in the applicant's suggestion that, as I have dismissed the ground (d) appeal, a partial award of costs should be granted.
14. Whilst I have not made a decision on the deemed planning application, I note the applicant's comments with regard to the policies and guidance listed in the enforcement notice and the Council's evidence on the ground (a) appeal. The allegation in the notice is of a material change of use of an existing stable building to a dwelling, whereas the reasons for the issue of the notice (paragraphs 4.(3) and 4.(4), in particular) appear to relate more to the construction of a new building, suggesting that the development is 'tantamount to a new dwelling'. Notwithstanding this, the development plan policy referred to in the notice is relevant. Policy CS1 of the Mole Valley Core Strategy relates to the location of new development, which would include the material change of use that is the subject of the notice.
15. The applicant's initial statement briefly refers to the apparent inconsistency between the allegation and the reasons for the issue of the notice. However, it primarily responds to the allegation as made in the notice, and refers to policy and guidance relevant to the material change of use that had occurred. This was prepared and submitted prior to the Council's appeal statement.
16. In this appeal statement I can see that the Council's case again relates more to a new building, rather than the material change of use alleged. I also note the

Council's suggestion that the development plan policy<sup>2</sup> referred to by the applicant, which appears to be particularly relevant to the development alleged in the notice, does not apply as it says 'the building must be considered a new building for residential purposes'.

17. The Council's approach to the ground (a) appeal may well have been misguided, and its reasons for referring to policies and guidance relevant to a new building may not have been persuasive. However, I am satisfied that there are parts of the Council's statement, although briefly stated, that are relevant to the development subject of the deemed planning application. On balance, I do not find the Council to have failed to substantiate its reason for the issue of the enforcement notice. Indeed, the applicant's robust response to the Council's case in her final comments would have been entirely relevant to the determination of the deemed planning application. The time taken to prepare this was not, therefore, wasted.
18. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Accordingly, an award for costs is not justified.

*J Moss*

INSPECTOR

---

<sup>2</sup> Policy RUD19 - Re-use and Adaptation of Rural Buildings of the Mole Valley Local Plan 2000.