



Costs Decision

Site visit made on 24 January 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4TH APRIL 2023

Costs application in relation to Appeal A Ref: APP/D3640/C/21/3281220 Land at Fenns Lane Nursery, Fenns Lane, West End, Woking GU24 9QE

- 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 Mrs Josephine Meaney and Mr Simon Meaney for a full award of costs against J W Elliott & Sons (West End) Limited.
- The appeal was against the issue of an enforcement notice relating to the use of various buildings and land.

Costs application in relation to Appeal B Ref: APP/D3640/X/21/3280462 Land at Fenns Lane Nursery, Fenns Lane, West End, Woking GU24 9QE

- 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 Mrs Josephine Meaney and Mr Simon Meaney for a full award of costs against J W Elliott & Sons (West End) Limited.
- The appeal was against the Council's refusal to grant a certificate of lawfulness in respect of the use of various buildings and land.

Decision

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

The submissions

2. The applicants have summarised their costs application, suggesting that the appellant has acted unreasonably by:
 - i. making no attempt to inform the Planning Inspector of further changes of use on the appeal site before and during the appeal process;
 - ii. failing to update and correct misleading and false evidence;
 - iii. withholding information and evidence that shows the true nature of how the appeal site is used;
 - iv. using misleading and false statements sworn under oath; and
 - v. introducing new evidence to support an appeal after the LPA and the Planning Inspectorate had made their decisions using evidence the Appellant provided to support previous applications and appeal cases.
3. I have had regard to the appellant's response in reaching my decision.

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. Paragraphs 052 and 053 of the PPG provides examples of unreasonable behaviour on the part of the appellant. I have had regard to these in reaching my decision.

5. At various points the applicants compare the evidence it says was submitted in support of the previous appeal with the evidence submitted in respect of the appeals that were before me. As I have mentioned in my appeal decisions, I have noted that the previous Inspector referred to the evidence before him in reaching his decision. I note that he refers to evidence, such as financial records and statutory declarations. Indeed, it may have been the case that the evidence that was before him was the same as that before me. However, none of the parties confirmed this.
6. None of the parties have made it clear what evidence was before the previous Inspector; what evidence has remained unchanged; what evidence has been amended; and what evidence has been supplemented or supported with additional evidence. I cannot, therefore, conclude that the appellant has changed their evidence or their version of events in order to succeed in their appeals.
7. The appellant is entitled to submit new evidence. After all, I note that the previous Inspector has pointed to imprecision and ambiguity in the evidence before him. The appellant is entitled to submit a further application for a lawful development certificate (LDC), submitting evidence that is more precise and less ambiguous. They have not, therefore, behaved unreasonably in this regard.
8. At various points of the costs application the applicants point to lack of precision and the ambiguity of the appellant's evidence. They also refer to evidence that they suggest contradicts the appellant's claims with regard to the use of various buildings or parts of the site, including building E, the containers and the car park. I have had regard to the contradictory evidence in reaching a balanced judgement in these appeals. I have not, however, found the contradictory evidence to be so robust as to demonstrate that the appellant had no hope of success in these appeals, such that I could find that they had behaved unreasonably in making their appeals.
9. Furthermore, whilst the appellant may have claimed that there is no evidence to contradict theirs. I regard this as them simply expressing a view that any contradictory evidence should not be given any weight in the balance. This is not unreasonable behaviour.
10. With regard to the details provided in the LDC application form and the appeal form subject of Appeal B, the appeal was found to be validly made and I am satisfied that the appellant in the case of both appeals is one and the same.
11. In my appeal decisions I have noted that in the previous LDC application the appellant claimed a use for building B for a use falling within Class B2 (General Industrial) of Part B, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended, whereas a use falling within Class B8 (Storage or Distribution) is now sought. The applicants suggest that this is an unexplained change to the appellant's evidence.
12. I find it to be a matter that goes to the imprecision and ambiguity of the appellant's case. There is evidence of the more recent occupiers of the building using it for storage. I also point to the evidence that suggests it was used for a

purpose falling within Class B2 by the Decorative Ceiling Company. A change to the claims made regarding the use demonstrates a misunderstanding of the matter of lawfulness in this case, rather than unreasonable behaviour.

13. I have had regard to the evidence the applicants have brought to my attention in their costs application with regard to the claimed use of building C. I can see that in the appeal statement the appellant's agent claims a storage use of the building, whereas the directors of the appellant company suggest a use for vehicle repairs and servicing. This is clearly an error on the part of the appellant's agent, but understandable in light of the Council's evidence of a mixed use of the building for a general industrial and storage use, which I have found persuasive under the ground (b) appeal for Appeal A.
14. I acknowledge that the applicants' claim of the cessation of the vehicle repair use of the building contradicts the continuity of the use by the directors of the appellant company. Whilst the appellant has withdrawn the matter of the lawfulness of building C from both appeals, it does not mean that the directors have changed their evidence on this matter. The test of the evidence is on the balance of probability. With this in mind, the appellant clearly reviewed their case, having seen the contradictory evidence submitted. I cannot find that they have behaved unreasonably in this regard.
15. As I have noted in my appeal decisions, equipment that is used on the wider appeal site may have been stored in building D during the 10 year period relevant to the matter of lawfulness for this building. The appellant has not, however, acted unreasonably in not mentioning this, notwithstanding my finding that it does not contradict their claims regarding the use of the building.
16. Whilst I note the evidence of tipping in various parts of the wider site, this was not a matter alleged in the notice, nor did it form part of the development subject of the LDC application. Furthermore, I have not had reason to consider the use of all parts of the site. The appellant has not, therefore, behaved unreasonably by not mentioning this.
17. 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