



Costs Decision

Site visit made on 3 October 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 10 November 2023

**Costs application in relation to Appeal Ref: APP/J1860/X/23/3321746
Land adjacent Pattann, Vehicle Repair Workshop, Wadborough Road,
Kempsey, Worcester WR5 3QH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Charles Morris for a full award of costs against Malvern Hills District Council (MHDC).
- The appeal was against the refusal of a certificate of lawful use or development for the established use of a vehicle repair workshop adjacent to Pattann Bungalow.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
3. Section 191(4) of the Town and Country Planning Act 1990 as amended indicates that if the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use or operations described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The Council's reason for refusal is based on fact and degree which, by its nature relies on a planning judgement of the evidence used to support the application.
4. The applicant considers that the Council misapplied the legal basis of the LDC, ignoring the case of *Panton and Farmer v SSETR* [1999] which makes clear that the need for the actual existence of the use at the time of the LDC application does not imply that the use must have been continuous since the date on which it became lawful, following a period of 10 years continuous use. The use can be established after ten years and remain dormant for periods provided it is not subsequently replaced by another use or abandoned.
5. The applicant claims that the wealth of evidence presented proves a 10-year continuous use at least from 1959 and no other use has superseded the garage/workshop use and there is no evidence of an intention to abandon the original use, demonstrated by the fact the owner has paid business rates on the site since 1959. The Council is said to have chosen to ignore the evidence and has misapplied the law.

6. Unreasonable behaviour is also claimed due to the Council not revealing any comments received from its legal department regarding the application under a Freedom of Information Request. The applicant also considers that this has led to the loss of a tenant and an inability to let the unit for at least 3 years because of the imminent threat of enforcement action.
7. The reason for refusing the LDC application states that the evidence demonstrates that on the balance of probability, the site has not been used solely for the purposes as a vehicle repair workshop for a period of more than 10 years.
8. From my reading of the Council's submissions, the Case Officer concluded that the building had not been shown to have been used as a vehicle repair workshop in a 10-year period prior to the application being made, not as alleged by the applicant. They considered that the evidence suggested that the site had been active with a number of non-related uses since it first became operational in 1959. It was the Council's view that the use sought had not become lawful by continuing throughout the relevant immunity period, such that the Council could have taken enforcement action at any time.
9. The Council's conclusion on the matter was correctly based on its planning judgement of the facts presented. I do not consider that the Council failed to properly evaluate the LDC regarding whether the site had been used as a vehicle repair workshop for a ten-year period. Consequently, and even though I concluded similarly, I find that there was no fundamental defect in the Council's approach in its decision making.
10. While the sight of legal advice to the planning officer may have been helpful for the appellant, there is no evidence sufficient to demonstrate that withholding the advice resulted in unnecessary or wasted expenditure. Furthermore, costs that are unrelated to the appeal or other proceedings are ineligible. Awards cannot extend to compensation for indirect losses, such as a loss of rental income.
11. Overall, I am not satisfied that it has been clearly demonstrated that there was unreasonable behaviour on the part of the Council that led the appellant to incur unnecessary or wasted expense. I conclude accordingly that an award of costs, either partial or in full, is not justified and the costs application should not succeed.

S A Hanson

INSPECTOR