



Costs Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 November 2023

**Costs application in relation to Appeal Ref: APP/W1850/X/22/3311916
Land at The Three Horseshoes Inn, Little Cowarne, Hereford,
Herefordshire HR7 4RQ**

- 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 Mr David Notley for a full award of costs against Herefordshire Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the residential occupation of the dwelling and detached garage approved under Planning Permission 153174 granted 3 February 2016 separately from the property known as The Three Horseshoes Inn on the basis that Condition 4 of planning Permission 153174 is unlawful, invalid and unenforceable.

Decision

1. The appeal is dismissed.

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. The basis for the applicant's substantive claim is the Council's alleged misjudgement of the application which was submitted under s191(1)(a) of the Town and Country Planning Act 1990 (the Act), that is, to ascertain if the existing use of the building is lawful. The application sought to determine if it is lawful to occupy the dwelling separately from the Three Horseshoes Inn because a condition which aimed to control such an independent use is considered by the applicant to be unlawful, invalid and unenforceable. In these circumstances the applicant considered the relevant test to be s191(2) that is: the use is lawful because no enforcement action can be taken against it 'for any other reason' namely that the planning condition is invalid, unreasonable and unenforceable.
4. The applicant submitted that the appeal property had been sold and was being occupied independently from the Three Horseshoes Inn. Consequently, the Council considered that a breach of condition had occurred regarding condition 4 of planning permission ref: 15317/F which restricted the sale, lease or letting of the dwelling which was the subject of the permission, separately from the public house. As the application was submitted pursuant to s191 of the Act for a certificate of lawfulness of existing use or development, it was considered that there had been a failure to comply with the condition and in the circumstances, s191(c) of the Act was relevant.

5. While the Council failed to issue the decision in a timely manner, it confirmed that as the determination would have involved a matter constituting a failure to comply with condition 4, it would therefore have been considered under Section 191(3) of the Act. Accordingly, it was for the applicant to demonstrate that (a) the time for taking enforcement action in respect of the failure has expired; and (b), that it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force. No evidence to support these requirements was presented. As such, an LDC pursuant to s191 of the Act would not have been issued for the use sought by the applicant.
6. From my reading of the Council's submissions, the Council's conclusion on the matter was correctly based on its interpretation of the legislation. I do not consider that the Council failed to properly evaluate the LDC regarding the applicant's opinion that the condition was unlawful, invalid and unenforceable. Consequently, I find that there was no fundamental defect in the Council's approach in its decision making.
7. The applicant has tried unsuccessfully on two previous occasions to argue their case. All three applications are seemingly based on the same argument. The applicant only exercised their right to appeal with respect to the refusal of the latest application which is the subject of the LDC appeal and this application for costs. The Council confirms that the applicant was informally advised to submit an application under the provisions of Section 73 of the Act. This, if approved, would allow the development without compliance with condition 4, which is what the applicant pursues.
8. An award of costs is only justified if the unreasonable behaviour is the cause of unnecessary or wasted expense. As can be seen from the appeal decision, I have concluded that the council's decision to refuse the LDC application was well-founded. While section 195 of the 1990 Act is clear that my remit is confined to considering whether the refusal was well-founded and not the reasons for it, I see nothing unreasonable in the council's approach to its deemed refusal of the LDC application.
9. 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 applicant 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