
Costs Decisions

Hearing Held on 17 & 18 October 2023

Site visit made on 18 October 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Costs application in relation to Appeals Ref: APP/X0360/C/22/3313844 and Ref: APP/X0360/W/22/3310598

Land at Atlanta, Wargrave Road, Remenham, Wokingham RG9 3JD

- 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 Christopher Williams for a full (APP/X0360/C/22/3313844) and a partial (APP/X0360/W/22/3310598) award of costs against Wokingham Borough Council.
 - The Hearing was in connection with an (a) appeal against an enforcement notice alleging, without planning permission, (1) the material change of use of the Land to residential, and (2) operational development comprising the erection of a dwellinghouse (Building A), the erection of an ancillary storage building (Building B), and the erection of a raised platform (decking), and (b) an appeal against a refusal to grant planning permission for the erection of an infill front extension, timber decking, roof to storage area and installation of a replacement flue (retrospective).
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Decisions: in relation to appeal Ref APP/X0360/C/22/3313844, the application is granted in part and a partial award of costs is made in the terms set out in the Costs Order below. The application in relation to appeal Ref: APP/X0360/W/22/3310598 is refused

The submissions for Mr Christopher Williams

1. The Council's own enforcement policy urges the Council to resolve matters by negotiation and that simply hasn't happened. Once the Council changed its mind after the site visit and decided this was a new dwelling that had to be completely removed, nothing would deter it from that path. Indeed, the Council's approach appeared to be designed to make the applicant think he was in the wrong, but this aggressive approach was actually to cover up that the Council got it right on the site visit and then wanted to change its mind. The Council had no reasonable basis for doing so. The Council misdirected itself about various matters by conflating use and works. This was initially the cause of the problem, followed by the mistaken belief that questions of use had been definitively settled by its decision on the application. The Council then deliberately derailed the planning application by telling all the consultees it was for a new dwelling.
2. The Council looked at the wrong property when considering the wet dock. Then, in weighing up whether to take enforcement action, the Council again conflated the issues about use and works and totally failed to properly apply its own enforcement policy. If scored correctly, the checklist would not properly have concluded the need to take enforcement action at all, and certainly not

before the use or works had been subject to scrutiny in the appeal process and further discussion. It simply wasn't necessary for the Council to take enforcement action and put the applicant to the threat of total demolition and all the cost of these proceedings. Doubly so because of the specific circumstances of the Council having signed the works off after inspection and then having changed its mind later. Any reasonable Council would have considered very carefully the proportionality of its actions in the circumstances and it is quite shocking that this wasn't even taken into consideration in its decision-making process.

3. Having unreasonably decided to take enforcement action, errors then continued in the preparation of the enforcement notice. It was concluded that the notice is not invalid, but we have had to discuss several corrections to it. We maintain that there has been no change of use, as we argued all along, for which our evidence was clear from the application stage and which the Council just got wrong. It is now agreed that the required steps are wrong and that complete site clearance was not correct, such that the worst case is reversal back to the position as it was in 2016. The Council's case was that this was impossible, but the applicant has proved that was wrong and it is entirely straightforward.
4. The Council's position that it brought to this appeal was just wrong. That then coloured everything else: the planning application has never been considered by the Council on the correct basis, it asserts that very special circumstances had to be proven and completely failed to give any consideration to the applicable paragraphs in the National Policy Planning Framework (Framework) for replacement, extension and infill, with which the proposal fully complies. All that had to be weighed up was whether it was necessary in planning terms to address the breach by going back to 2016, and whether the design changes were appropriate in a balanced planning decision.
5. All that needed was a sensible discussion about whether the black cladding was an acceptable way to address rodent intrusion; was unifying the roof profile a good or bad design solution; is infilling within the envelope of the building really a problem; what is wrong with a deck for the dock so you don't have to put your waders on to get to the boat in high water and crucially what is the best covering for the storage area: a timber roof that projects 2" above the fence or a blue tarpaulin? These are not matters of planning policy principles, they are simple development control questions that should be resolved in that forum. Because the consultees were told it was a new dwelling when it wasn't we still have no idea what the Council's view is of them, only the view of 2 enforcement officers who were on a crusade against the applicant.
6. What is telling is the way the Council completed its enforcement scoresheet alleging harm that does not exist (as evidenced by the total lack of any adverse comment on the design from anyone actually impacted by it), alleging policy consequences which simply don't arise on a localised development control issue. This is not about the political issue of "saving the green belt", it is about a deck to get to a dock or a building 2" poking over a fence. The Council's zero tolerance approach to Green Belt and its fear about "precedent", again wrongly identified on the scoresheet as a reason to take enforcement action, is not only inappropriate, but it is unlawful. Human Rights is in the background, but the point here is that the Council was required to make a balanced planning

judgement and it just got it all wrong in this case: if it had properly applied its scoresheet, it would have realised that.

7. At no point in the proceedings did the Council weigh up whether it was appropriate or proportionate to seek to punish the applicant by seeking total demolition of his property leaving him with nothing, the impact that would have on his family of the loss of that treasured family recreational resource with all the memories associated with it and the stress these proceedings have had on Mr Williams. That is over and above the costs of the proceedings and the further costs he would incur, and catastrophic loss of value he would suffer, if he was required to clear the site as the Council's notice appeared to require in its unamended form. The applicant does not condone doing development without first getting planning permission. It leads to problems.
8. In this case, if the applicant had received professional advice before undertaking the work, Mr Williams would have been advised to clarify the use and get consent first and then do the works. Eventually the right answer would have emerged and at some point later Mr Williams would have got approval to do this scheme or something very similar to it. The planning system supports the applicant's view in that if what you are doing is acceptable in planning terms, then the enforcement regime should not be engaged. The applicant thought he was addressing a legitimate issue with rodent intrusion. He was trying to do the right thing and be sustainable. He made sensible decisions about materials and design to improve his comfort. This appeal raises the questions: what is wrong with a deck to a wet dock, and why would anyone want to see the return of the previously existing blue tarpaulin over the storage area?
9. The applicant accepts that an appeal in relation to the use of the site was perhaps inevitable and so costs are not sought against the Council in relation to its refusal to grant a certificate of lawful use or development (LDC). But the enforcement appeal was wholly unnecessary: the Council simply got it wrong. Accordingly, the applicant seeks a partial award of costs in respect of the costs of the planning application appeal to the extent the Council considered it on the wrong basis of a new dwelling, and an award of all the costs of the enforcement appeal.

The response by Wokingham Borough Council

10. The Council submits that the application is ill-conceived. The Council's responds to both the procedural and substantive elements of the application.

Procedural

11. In short, a change in circumstances during the course of the enforcement investigation resulted in the Council reaching a different view than originally advised to the applicant. The Council has clearly set out its reasons for its change of view throughout the appeals process. In April 2021, an enforcement investigation was raised into alleged building works on the site. Contact was made with the applicant and the first site visit was carried out on 15 April 2021. On the Council's first visit, the building works on site had progressed considerably and there was no evidence to suggest the existing use of the main building as residential. When the applicant was initially advised by email on 7 May 2021 that there were no further questions on the main building "at this

- time”, this was on the basis of what was observed on the first site visit, and that there was no prior planning history for the site relating to the building or indicating residential use.
12. Correspondence took place before the Planning Contravention Notice (PCN) was served on the applicant on 7 February 2022. Following a period of no correspondence, contact was made with the applicant and a second site visit was carried out on 7 December 2021. External access was granted, and items were observed, including within the main building, which appeared domestic in nature. At this stage it appeared to the Council that what was observed on site could represent a residential dwelling, which contradicted the previous understanding of a sole leisure/recreation use. It is usual practice to serve a PCN to establish whether an alleged breach of planning control has occurred or not. The applicant responded to the PCN on 27 February 2022 and a CLUED application was invited by the Council to allow the applicant to demonstrate the time periods and uses claimed in the PCN response. Namely, that the claimed (leisure) use of the main building had been ongoing since 2002 and that all building works carried out since 2016 had consisted of alterations, extensions plus refurbishment of the ‘original’ building only.
 13. This application was validated on 3 May 2022 and subsequently refused on 19 July 2022 as the Council concluded that the appellant had failed, on the balance of probabilities, to demonstrate that the building works and use applied for are lawful through the passage of time i.e., the evidence before the Council was imprecise and ambiguous. On 15 June 2022, prior to the determination of the CLUED application, a further site visit was carried out and internal access to the main building was granted. The internal facilities, including kitchen, bathroom and bedroom, were observed in full at this date resulting in the Council’s view that a new dwellinghouse had been created. Following the refusal of the CLUED, there was no evidence to suggest that any development on the site was lawful (with exception of the existing wet dock). The applicant was first informed that an Enforcement Notice was being prepared on 1 August 2022 by letter with advice regarding their right of appeal.
 14. In response, the applicant submitted a retrospective planning application which was validated on 5 September 2022 and subsequently refused on 31 October 2022. There had previously been discussions with the appellant on submitting a retrospective planning application, however following the refusal of the CLUED application the Council did not invite any further applications. Through inviting the submission of the CLUED application prior to taking enforcement action, the Council was engaging in negotiation with the applicant in line with the Local Planning Enforcement Plan. Following the refused planning application, further negotiation with the applicant would not have resulted in a different outcome as there was fundamental disagreement between the parties on the use of the site and scale of development carried out, as demonstrated by the retrospective planning application submitted for part of the building works carried out only.
 15. Consultees are advisors, and as with any other planning application they assessed the application from the perspective of their specialism. As the context of the site and the application was unclear in the submission, consultees were advised of the Council’s position and asked if this changed their comments. Both the Landscape Officer and Drainage Officer were asked if

the site's context changed their comments, rather than being asked to change their opinion of the proposed development.

16. Proportionality is discussed in section 8.0 of the Expediency Report. It was in the public interest to issue the Enforcement Notice because of the level of harm from the residential use of the site which in national and local policy terms is unacceptable in principle due the site's sensitive location within the Metropolitan Green Belt and Flood Zone 3b.
17. As raised by the Inspector at the Hearing, grievances regarding how the enforcement investigation was carried out can be taken up via the Council's complaints procedure and ultimately the Local Government and Social Care Ombudsman if the applicant so chooses. It should also be noted that the applicant did concede at the Hearing that the building in question is a dwelling, as alleged in the enforcement notice.

Substantive

18. The Officer's Report for the retrospective planning application (Council Ref 222376) clearly sets out how the proposal was assessed including consideration of the site's planning history. At this stage, there was no evidence that the existing building the proposal related to was lawful, following the refused CLUED application and there being no other records for the building.
19. Regarding the aerial image in the Officer's report for the CLUED application (Council Ref 221304), which accidentally outlined the adjacent site in red, this was addressed in the Hearing and accepted as an error. It would not have been the governing factor in determining the application.
20. As set out in the Expediency Report, the harm resulting from the unauthorised development was serious. The identified harm was broken down into the 'Main Planning Issues' (section 6 of the Expediency Report) which informed the checklist scores within Appendix 1 of the report. As set out in the Local Planning Enforcement Plan, the checklist is an indicative tool to "assist with determining whether formal action should be taken or not".
21. The corrections to the Enforcement Notice discussed at the Hearing are only potential corrections as these were not confirmed and are subject to the site visit and outcome of the appeal. The applicant believes that the Hearing has established that there has been no change of use as they have argued all along, however their written statements for the appeal maintain the leisure use of the main building on site. The applicant's argument changed during the course of the Hearing when it was accepted that it was a dwelling. Nonetheless, the Inspector has the power to vary the notice if deemed necessary.
22. The applicant conceded at the Hearing that this is a dwelling. This was not the applicant's position at the time the applications were submitted and the main building had all the makings of a dwelling.
23. A balanced planning judgement was made. In this case, the environmental harm clearly outweighs the social and economic benefits of having a dwellinghouse on this site. This is demonstrated by the unauthorised development being unacceptable in principle in terms of local and national

planning policy and ultimately the matter constitutes unsustainable development. The matters claimed to be simple within the applicant's costs claim cannot be considered as such and were rightly ruled out during the consideration of the retrospective planning application and the expediency report.

24. The Council concludes that the applicant has failed to demonstrate that it has acted unreasonably and/or that the appellant has thereby incurred unnecessary or wasted expenses in submitting these appeals. The appellant is clearly aggrieved at having to pursue this case through the appeal process, but this is not a reason for the grant of an award of costs. The Council considers that it has not acted unreasonably or caused the appellant to incur unnecessary or wasted expense during the applications or its consideration to the serve the Enforcement Notice. It is simply a case that parties disagree on the scale of works carried out on site and what is considered acceptable development in this location. This is not considered a reason for an award of costs against the Council.

Reasons

25. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include acting contrary to, or not following, well-established case law and refusing to enter into pre-application discussions when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal. For enforcement action, the PPG indicates that local planning authorities must carry out adequate prior investigation. The PPG makes it clear that local planning authorities are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to issue the notice in the first place, or ensured that it was accurate.
26. This application for costs covers two separate appeals: Refs: APP/X0360/C/22/3313844 and APP/X0360/W/22/3310598. It is convenient to consider the application separately in relation to each appeal.
- APP/X0360/C/22/3313844*
27. The applicant's principal complaint is that the Council was simply wrong to initiate enforcement action in this case and, in particular, that the Council completed its enforcement scoresheet incorrectly. Whether or not is expedient to initiate enforcement action is entirely a matter for the local planning authority. Expediency is never a matter that is before the Planning Inspectorate, and can only be tested in the courts through Judicial Review.
28. That said, and as explained in the Council's Local Planning Enforcement Plan, the enforcement scoresheet is merely a tool to assist the Council in

determining whether or not it is expedient to initiate enforcement action in any particular case. The scores allocated in completing that scoresheet are again entirely a matter for the Council. Having seen a copy of the completed enforcement scoresheet for this development, I find nothing inherently unreasonable about the scores attributed to each aspect of the development. For example, the protection of the Green Belt is long-established Government policy and as set out in the Framework is a policy that attracts substantial weight. Attributing a score against the development on the basis that it constitutes a major planning policy breach is entirely consistent with that. The same applies to all the other categories that attracted a score. I therefore find nothing unreasonable about the Council's behaviour in completing that scoresheet and using the results to justify initiating enforcement action in this case.

29. Neither is there anything unreasonable in the Council initially confirming in writing that planning permission was not required and then re-evaluating its position in the light of new evidence (in this case the further site visit undertaken by the Council on 7 December 2021). As held in *R v E Sussex CC ex parte Reprotech (Pebsham) Ltd* [2002] UKHL 8, pre-application advice from a Council official is subject to the doctrine of Estoppel by Representation. It is clear from the judgement in *Reprotech* that the doctrine of estoppel has no part in planning law and that informal advice given by a Council official is not binding on that Council. It is also settled case law that planning is the subject of an extensive statutory code and that there would be very few instances where a legitimate expectation will have arisen that a Council would operate outside of the code. There is therefore little prospect of a Council being estopped from taking some form of action on such a basis.
30. In this case, the email dated 7 May 2021 from the Council's officer informing Mr Williams that planning permission was not required for the works contains a disclaimer to the effect that the email constitutes an Officer opinion only, is given without prejudice and does not constitute any formal determination under the 1990 Act. That disclaimer could not have been any clearer. The Council cannot be held responsible if the applicant chose not to follow that clear advice and not seek a formal determination as to whether planning permission was required through the submission of an application for a Certificate of Lawful Development or Use (LDC). Neither can the Council be held responsible for the fact that the applicant elected to continue with the development, notwithstanding the advice in the disclaimer, eventually leading to the enforcement notice being issued.
31. I recognise of course that Mr Williams is not a planning professional and that there is absolutely no expectation that he should have been aware of the judgement in *Reprotech* or its repercussions in this case. However, it is clear from Mr Williams' Statutory Declaration and his oral evidence at the Hearing that he is (and was when he purchased Atlanta) acutely aware of the sensitivity of the appeal site and surroundings in planning terms. Indeed, he himself had a planning application for a building for use as a leisure store and changing room refused in 2002 predominantly on the grounds of increased risk of flooding (Council Ref: F/2002/6163). It is also reasonable to conclude that Mr Williams gained some understanding of the planning process from the submission of that application, including that planning permission could be required for the erection of new buildings.

32. The Council has not alleged that the development subject to the enforcement notice constitutes intentional unauthorised development for the purposes of the Written Ministerial Statement published in December 2015¹. I see no reason to take a different view. I fully accept that Mr Williams genuinely believed that he did not require permission for what he perceived as being alterations to the existing building. Nevertheless, there is a subtle distinction between carrying out development in full knowledge that planning permission is required and carrying out development without undertaking due diligence to ensure that planning permission is not required. It is the latter that has occurred here.
33. In my view, armed as he was with some previous knowledge of the planning system, when Mr Williams received the written advice from the Council in 2021, it was at best imprudent and at worst reckless not to act on the advice in the disclaimer and seek formal determination from the Council as to whether planning permission was required for the proposed works or not. Had he done so, there is a very real possibility that the matter could have been resolved without the need for the Council to initiate enforcement action.
34. The same can also be said, and to an even greater extent, about the raised platform (decking). Having previously received a refusal of planning permission on the grounds of flood risk in relation to a building with a smaller area/footprint than the new decking, the applicant ought to have anticipated that the erection of a structure of greater area/footprint and even closer to the river might have raised similar issues. It would in my view have been prudent for the applicant to have sought planning permission for the decking (or a formal determination of the Council that planning permission was not required) before constructing that structure. At the very least, it would have been prudent to have sought an informal opinion from the Council and/or advice from a planning professional before carrying out that development.
35. In every case, it is the responsibility of the landowner to ensure that all the necessary consents and permissions are in place when carrying out development. Not doing so places the landowner at risk of enforcement action should the local planning authority consider that to be expedient. This is exactly what happened here. By not following the advice set out in the disclaimer on the email dated 7 May 2021, the applicant exposed himself to the risk of enforcement action. The Council cannot then be criticised for exercising its option to issue an enforcement notice.
36. Consequently, looked at in the round, there was nothing unreasonable in the Council taking enforcement action in this case. There is nothing in the evidence to suggest, on my reading, that the Council was aggressive in its approach or that there was any sort of crusade against the applicant. The timeline is evidence of that.
37. Having received a complaint about the works in progress, the Council first visited the site. The initial conclusion was that the works taking place did not require planning permission and the Council issued correspondence to that effect. That advice carried a clear disclaimer to the effect that any opinion expressed by one of its officers was without prejudice to any formal

¹ Written Ministerial Statement :Green Belt protection and intentional unauthorised development, published on 17 December 2015.

- determination that it might make. The development continued regardless. The Council then issued a Planning Contravention Notice (PCN) to establish the relevant facts. Upon receipt of the completed PCN, the Council requested the submission of an LDC. It was only after the LDC was refused did the Council issue the enforcement notice, having first assessed the breach of planning of planning control against its standard enforcement scoresheet and having arrived at reasonable scores in doing so. The whole process, from the email in May 2021 to the issue of the enforcement notice in December 2022, took a total of some eighteen months.
38. In my experience, the approach taken by the Council from the investigation of the initial complaint to the issuing of the enforcement notice was entirely conventional, almost to the point of being textbook. There is no hint in the evidence before me that the Council was aggressive in its approach or was being punitive in issuing the notice: on the contrary, the reasons for issuing the notice were based on long-established planning policies and the steps required to comply with notice were not excessive. The taking of enforcement action was entirely proportionate to the breach of planning control alleged.
39. Moreover, the applicant's complaint that the Council sought to deliberately derail the planning application by advising all the consultees that it was for a new dwelling is entirely without merit. The Council was evidently not entirely clear about the nature of the development that was proposed and, in that scenario, I find nothing unreasonable about describing the development as a new dwelling. In the event, I found that the 2016 building provided all the facilities required for day-to-day private domestic existence and that, on the balance of probability, it constituted a dwellinghouse. I also found that what had occurred was the erection of a new building. The Council was therefore entirely correct in describing it as a new dwelling.
40. The applicant maintained that the notice, when issued, was invalid and was incapable of correction. The points raised in this respect did not go directly to the validity of the notice and fell to be considered under the various grounds on which the appeal was made. I found that the notice is not invalid. The Council cannot be said to have acted unreasonably in that respect.
41. I described above the Council's approach to the issuing of the enforcement notice to be *almost* to the point of being textbook. If the Council can be criticised at all in that respect, it is insofar as the investigation of the breach of planning control was in places not as robust as it might have been. In particular, the Council misdirected itself by conflating the use of the land and the works undertaken to form the dwellinghouse. The applicant's use of the land was first briefly described in the completed PCN dated 27 February 2022. A fuller and more detailed account was given by Mr Williams in his Statutory Declaration dated 21 April 2022. The Council therefore had that information available to it at the time that it was considering taking enforcement action.
42. The Council firstly arrived at the conclusion (correctly, in my view) that the then recently constructed building was a dwellinghouse. The Council then appears to have assumed that the use of the land was residential in connection with that dwellinghouse. In other circumstances, that might have been a reasonable assumption to have made. However, in this case the Council already had before it the evidence from the completed PCN and Mr Williams'

Statutory Declaration to the effect that the land was in use as a leisure plot. It also had knowledge of the planning permission granted in February 1989 for the 'change of use of land at River Thames slipway to moor a boat' (Council Ref: 322243)². That permission should have at least alerted the Council to the possibility that there was a mixed use of the planning unit.

43. It appears to me that the Council became fixated on the conclusion that the land was in residential use, to the extent that it excluded other evidence that pointed in a different direction or simply did not consider it at all. At no point, as far as I can tell, did the Council turn its mind to question of other possible uses of the land.
44. That much is evident from the Council's Expediency Report. The first bullet point in Paragraph 1.0 of that report identifies the lawful use of the land for leisure/recreational purposes. Paragraph 3.0 of the report identifies one of the breaches of planning control as, without planning permission, the material change of use of the land to residential. But there is nothing in the Council's Expediency Report to explain how that alleged breach of planning control was arrived at, or on what evidence. There is no analysis of the evidence from the completed PCN or in Mr Williams' Statutory Declaration, or the planning history insofar as it relates to the use of the land. Nothing to support the conclusion that the use of the land set out by Mr Williams' in his Statutory Declaration was as even so much as considered, let alone sound reasons why it was not accepted as being an accurate version of events and then discounted. Given the weight to be attached to a properly made Statutory Declaration³, that in my view is a serious failing on the part of the Council.
45. The investigation into the erection of an ancillary storage building (Building B) was also less than diligent. In his Statutory Declaration, Mr Williams made it clear that the building was completed in 2016 and that, at time, it featured a roof. Mr Williams then goes on to describe how that roof began to leak and that it was replaced, at first with a blue-coloured tarpaulin and later with a replacement roof (that subject to the enforcement notice). Furthermore, there is a photograph of the storage building covered with a blue-coloured tarpaulin attached to Mr William's Statutory Declaration. This photograph gives further credence to Mr Williams' evidence in this regard. That evidence was before the Council at the time it was still considering taking enforcement action.
46. In the event, the Council had no evidence of its own to contradict that provided by Mr Williams in his Statutory Declaration or make his version of events less than probable. Furthermore, even a cursory inspection of Building B reveals that the existing roof is a replacement, the remaining structure displaying clear signs of weathering and deterioration. This strongly suggests that the main part of Building B was constructed in or around 2016, as described in Mr Williams' Statutory Declaration. The failure of the Council to properly analyse the evidence resulted in the breach of planning control being misdescribed in the notice. This in turn resulted in the applicant incurring wasted and unnecessary expense in responding to a breach of planning control that did not occur as alleged in the notice.

² Specifically listed in the Relevant Planning History in the Council's Expediency Report.

³ The Council has at no point disputed that Mr Williams' Statutory Declaration is properly made.

47. The PPG makes it clear that local planning authorities are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to issue the notice in the first place, or ensured that it was accurate. I do not go so far as to say that the whole appeal could have been avoided had the Council been more diligent in its investigation before initiating enforcement action. The other breaches of planning control did occur (albeit misdescribed in one instance), such that an appeal against the notice could not have been entirely avoided. There is, however, no doubt in my mind that the applicant incurred wasted and unnecessary time and expense in responding a breach of planning control which may (and I put it no higher than that) have not been alleged had the Council been more diligent in its investigation and properly considered the evidence that it had before it prior to issuing the notice. I consider that the Council acted unreasonably in that respect.

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48. On my reading of this application, the sole complaint is that the planning application that led to the appeal was considered on the wrong basis: that it was a new dwelling, rather than the erection of an infill front extension, timber decking, roof to storage area and installation of a replacement flue that had been applied for. However, for the reasons set out in my main decision, I found that Building A provides all the facilities required for day-to-day private domestic existence. It is, as a matter of fact and degree, therefore a dwellinghouse⁴. It follows that the Council had been right all along⁵. The applicant's complaint is therefore entirely unfounded, and no award of costs is justified in this regard.

Costs Order (Appeal Ref: APP/X0360/C/22/3313844 only)

49. 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 Wokingham Borough Council shall pay to Mr Christopher Williams, the costs of the appeal proceedings described in the heading of this decision, insofar only as they relate to work undertaken (including attendance at the Hearing/site visit) in relation to the breaches of planning control constituted by the material change of use of the Land to residential and operational development comprising the erection of an ancillary storage building (Building B); such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Wokingham Borough 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.

Paul Freer

INSPECTOR

⁴ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

⁵ Whether the Council was correct in accepting the application as being valid is another matter entirely but, since the application for costs has not been made on that basis, I will not consider that point.