



Costs Decision

Site visit made on 5 December 2023

by D Hartley BA(Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

**Costs application in relation to Appeal Ref: APP/M2270/C/22/3295165
Land at High Birch Cottage, 21a Broadwater Down, Tunbridge Wells, Kent,
TN2 5NL shown edged red on the attached plan ("the Land")**

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Sharon Wood for a full award of costs against Tunbridge Wells Borough Council.
 - The appeal was against an enforcement notice alleging without planning permission the material change of use of the Land from residential garage to florist workshop.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 expense in the appeal process.
3. The appellant states that the local planning authority (LPA) has acted unreasonably resulting in wasted time and expense in pursuing the appeal. It is claimed that the LPA declined to engage with the applicant on 10 March 2022 in terms of whether changes to the operation of the florist workshop business would be capable of addressing the concerns raised by a previous Inspector who considered a retrospective planning application for use of the appeal building as a *'florist workroom to prepare flowers for sale'*¹. The evidence is that the LPA took the view that it would not withdraw the enforcement notice and did not expressly invite the submission of a further planning application.
4. It was of course open to the applicant to have considered submitting a further planning application to the LPA, particularly if she considered that it was a materially different proposal to that considered by the previous Inspector. It is not entirely certain, based on the evidence that is before me, if the LPA would have formally declined to determine such an application.
5. In any event, it is not the case that the breach of planning control was incorrectly identified as claimed by the appellant. In my judgement, it was the plan attached to the notice that was incorrect. The applicant, who is professionally represented, is fully aware of powers under s.176 of the Act. In my appeal decision, I have concluded that the appellant could have lodged a

¹ Planning appeal reference APP/M2270/W/21/3268269

ground (a) appeal, based on the alleged breach of planning control, and in the knowledge that the red edged plan attached to the notice could have been corrected. On the evidence before me, there is no doubt that the appellant was aware that the enforcement notice was directed at use of the outbuilding as a florist workshop. Indeed, the focus of the appellant's statement of case, particularly in paragraphs 3.1 to 3.4, relates to such a use.

6. While it would appear that the LPA did not engage in detailed discussions with the appellant about the enforcement notice, or support the submission of a further planning application, the appellant had the option of appealing the enforcement notice under ground (a) of section 174(2) of the Act. However, the appellant chose not to do so. That in itself does not mean that the LPA has acted unreasonably and hence that the appellant has been put to wasted time and expense in pursuing the appeal.
7. For the above reasons, I conclude that the LPA has not displayed unreasonable behaviour resulting in wasted time and expense in the appeal process. Therefore, an award of costs is not justified.

D Hartley

INSPECTOR