



Costs Decision

Site visit made on 15 June 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 7 October 2024

The Stone Barn, Noble Street, Sherston, Wiltshire SN16 0NA

Costs application in relation to Appeal Ref: APP/Y3940/X/23/3314398

- 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 Simon Grainger (Grainger Fine Wine Ltd) for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use (LDC) of the premises for Class E (Commercial, Business & Service) and the proposed installation of a mezzanine floor.
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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 192(2) of the Town and Country Planning Act 1990 (the Act) says that if the local planning authority are provided with information satisfying them that the use or development described in the application would be lawful at the time of the application, they should issue a certificate and in any other case they shall refuse the application. The onus is on the applicant for providing sufficiently precise and unambiguous evidence and the test is one of a balance of probabilities.
4. The applicant's case against the Council regarding the use of the building is that it disregarded the evidence that was presented in support of the LDC application and provided no evidence to support the view that the use fell within Class B8 (storage or distribution) of the Town and Country Planning (Use Classes) Order 1987 as amended.
5. The applicant sets out that the appeal building, once incorporated into Tucks Farm Shop complex in the early 1990s, became part of the single larger planning unit that had planning permission for use as a meat distribution centre with ancillary sales. They consider that the Council failed to apply the tests in *Burdle*¹ and assess the lawful use of the planning unit as a whole, but rather remained of the view that the appeal building was a separate planning unit which was primarily used for storage purposes.

¹ *Burdle v SSE* [1972]

6. The Council considered that as there was no record of an LDC or planning consent having been issued to certify or grant a change of use from B8 to a retail use, there was insufficient evidence to demonstrate that a retail use was lawfully established at Tucks Farm Shop. The Council's view was that the complex remained in a B8 use and as this use class had not been revoked or amended, it remained as such. Thus, it considered that the proposed use of the appeal building as sought by the LDC application to one falling within Class E3 would not be lawful.
7. The use granted on the site was for a meat distribution centre and I considered that such a use would fall into B8 (storage or distribution) with an ancillary retail element. While the Council acknowledged a retail element was permitted with the original consent, they remained of the view that the retail use would be ancillary and not the primary use of the site. They were also of the view that there was no evidence to show that retailing had taken place from the appeal building and the building, having been consumed within the use of the wider site, was used in an ancillary manner to the primary use of the land. Thus, it seems to me that the Council did not consider the appeal building to form a separate planning unit but considered the use of the site as a whole.
8. The applicant draws attention to the 2017 planning officer's report concerning a planning application for a change of use of one of the buildings within the complex following the change of ownership. The report refers to the site being primarily in a use falling within Class A1 (retail). The applicant considers that the Council simply ignored its officer's consideration of the Tucks Farm Shop complex rather than acknowledging it as evidence that would support the use of the site at that time.
9. From my reading of the officer report, the writer's appraisal of the site is likely gained from information supplied in the application for planning permission rather than a personal assessment. While they say that the site was formerly in A1 use, and formed part of the wider Tucks Farm Shop complex they refer to permission having been granted for the change of use of the main Tucks Farm Shop building from meat processing with ancillary retail to a soft furnishing workshop with ancillary retail. To me, this sounds as though they remained of the opinion that the site was, prior to the applications for a change of use, in a B8 use.
10. The Council's conclusion on the proposed use of the appeal building was based on its planning judgement of the facts presented. Although I surmised differently to the Council that the B8 use had likely evolved over the years and been superseded with another use, I found that the evidence was light on substance when it came to defining when changes within the business occurred and therefore whether a Class E use had been established. I was also of the opinion that the ancillary use of the appeal building would not survive the loss of the primary use of the site following the subdivision and sale of the land and this would have resulted in the creation of a new planning unit.
11. In respect of this matter, I do not consider that the Council failed to properly evaluate the LDC for the proposed use of the appeal building as sought. I find that there was no fundamental defect in the Council's approach in its decision making and the Council was entitled to make the judgement it did based on its interpretation of the Use Classes Order and the information supplied.

12. With regard to the installation of a mezzanine floor, the applicant considers that the Council's claim that the proposed operation would require additional works that may affect the building externally was mis-guided. Furthermore, they claim that it was unreasonable of the Council to refuse the application due to an absence of information to satisfy it that structural interventions such as columns would not be necessary to support the floor.
13. While I do not necessarily agree with the Council that the mezzanine floor as proposed by the application would possibly require further structural interventions, the drawings which accompanied the application showed a basic floor plan and my decision was formed from the information provided, with a proviso that if works went beyond what was proposed in the LDC application, planning permission may be required. Although most mezzanine floors do not involve development that requires planning permission, the Council was entitled to take the view that the proposed works to form the floor could require more intervention and refuse to issue a certificate because it was not satisfied that the works would not involve development that would require planning permission.
14. An award of costs is only justified if unreasonable behaviour is the cause of unnecessary or wasted expense. I am not persuaded, having regard to the facts and circumstances, that it has been demonstrated that the applicant has incurred unnecessary or wasted expense in connection with the appeal. The Council was not persuaded by the evidence presented and thus acted in accordance with the Act in its refusal. I conclude accordingly that an award of costs, either partial or in full, is not justified and the costs application should not succeed.

SA Hanson

INSPECTOR