



Costs Decision

Hearing held on 10 September 2024

Site visit made on 10 September 2024

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2024

77 Burley Road, Bockhampton, Bransgore, BH23 7AJ

Costs application in relation to Appeal A: APP/B1740/C/23/3331915 and Appeal B: APP/B1740/C/23/3331916

- The applications are 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 applications are made by Mr Andy Boulton (Appeal A) and by Mrs Tina Boulton (Appeal B) for a full award of costs against the New Forest District Council.
- The appeal was against an enforcement notice alleging the construction of a single storey building on the Land shown in the approximate position marked with a black cross on the attached plan.

Costs application in relation to Appeal C: APP/B1740/X/24/3340260

- 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 and Mrs Andrew and Tracey Boulton for a full award of costs against the New Forest District Council.
- The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the construction of outbuilding under Class E of GDPO.

Decision

Appeals A and B

1. The applications for an award of costs are refused.

Appeal C

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

The submissions for Mr and Mrs Boulton

3. The appellants costs applications were submitted in writing, the evening before the Hearing. Accordingly, due to the timing of the applications, the Council were given the opportunity to consider their response during the course of the Hearing.
4. The crux of the appellants case is firstly, that the Council failed to provide the requested legal opinion they had received in a timely fashion. This information was only partially provided on 28 December 2023, with a full response not until 20 March 2024, following a freedom of information request by the appellants and after the appeals had been lodged. They further consider that the legal opinion is factually incorrect.
5. Secondly, they submit that the Council have changed their position with regard to the application of Class E of the GDPO. They assert that the Council have

changed their stance throughout, introducing new issues during the course of the enforcement investigation and the appeal process.

6. The appellants final comments following the Council's rebuttal of their applications, were made orally at the Hearing. They then raised a further point about the stove flue for Appeal C, which they argue had not been raised in advance of the Hearing.

The response by the New Forest District Council.

7. The Council's response was made orally at the hearing. The information subject to the appellants request included a Solicitors report. Therefore, they needed time to consider whether any legal privilege applied causing some initial delay. The report was nonetheless provided. Since then, other reports and information have also been provided, giving the appellants time to address any additional issues arising from the legal opinion prior to the Hearing. As a result, they refute that there has been any prejudice to the appellants, or that the Council has acted unreasonably.

Reasons

8. 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.
9. It is not clear from the appellants submissions how the Council's behaviour has affected the preparation of their case, or resulted in unnecessary or wasted expense. Nevertheless, from the evidence it is clear that the Council initially took the view that the appeal building benefitted from permitted development rights conveyed by Class E of the GDPO. I agree with the appellant that this was very unhelpful. However, I am also mindful that the informal view of the investigating officer, even when put in writing, is not legally binding on the Council, in the absence of a formal application.
10. The Council then sought legal advice to clarify their position. This was provided to the appellants, albeit after some delay, but some five months before this Hearing. The decision notice for the LDC application (23/11029) (Appeal C) was issued on 21 November 2023. This made it clear that the Council considered that the site was in a mixed use and thus did not benefit from rights conveyed by Class E of the GDPO. It will be seen from my decision that I have come to the same view on this point.
11. Turning to the stove flue, from the evidence this was included on the plans submitted with the application for the proposed development. The plan titled Plans and Elevations and Block Plan (22007-401), shows the elevations of the proposed building, with the stove flue shown above the ridge of the roof. The measurements on this plan show the ridge height to be 3.995m. Moreover, this was specifically raised by the Council in both the draft and the signed SoCG. The appellants conceded at the Hearing, that this had been overlooked.
12. Overall, whilst the initial change in the Council's position is regrettable, I find that the appellants had sufficient time to reconsider their position in the light of all of the Council's concerns. For these reasons I am satisfied that the Council was entitled to review their position and then take the action they did. I

therefore cannot agree that their approach on these matters was unreasonable, or that an award of costs would be appropriate.

Conclusions

13. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in this instance. Accordingly, an award of costs against the Council is not justified.

Hilary Orr

INSPECTOR