



Costs Decision

Hearing held on 13 August 2024

Site Visit made on 13 August 2024

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2024

Costs application in relation to:

Appeal D Ref: APP/X0360/C/23/3321237

Appeal E Ref: APP/X0360/C/23/3321238

Appeal F Ref: APP/X0360/C/23/3321239

The Loft, Part Lane, Swallowfield, Reading, England RG7 1TB

- 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 Mrs Angela Pidgeon, Mr Ian Pidgeon and Mr Robert Pidgeon for a full award of costs against Wokingham Borough Council (the LPA).
 - Appeals D, E and F were against an enforcement notice alleging, without planning permission, the material change of use of the Land to a mixed use of ancillary residential use associated with the first floor flat known as 'The Loft', business and storage uses.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural Matters

2. The three appeals subject of this costs application were considered alongside three other appeals¹ by the same appellants in respect of the same site. The costs application was made at the Hearing, but only in relation to the three appeals set out above. I have referred to them as appeals D, E and F to avoid any confusion and to allow cross reference with the corresponding appeal decisions.

Submission for applicants

3. In summary, the application for costs is on the basis that the LPA has behaved unreasonably in issuing an enforcement notice which alleges a material change of use to an ancillary use and wasted expense has been incurred in producing statements and attending the Hearing in respect of the appeals.

Response by the LPA

4. In summary, the response for the Council was that throughout their investigations, the applicants referred to the residential use as ancillary and it would thus have been difficult for the Council to refer to it in any other way.

Reasons

5. Parties in enforcement appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded

¹ APP/X0360/C/23/3321232, APP/X0360/C/23/3321233, APP/X0360/C/23/3321234

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.

6. The three appeals concern an enforcement notice directed against the material change of use of the Land to a mixed use of ancillary residential use associated with the first floor flat known as 'The Loft', business and storage uses. At the Hearing, the LPA accepted that there is a misdescription the notice, on the basis that an ancillary residential use cannot comprise a primary use as part of a mixed use to which there has been a material change. As set out in the appeal decisions, I concluded I was unable to correct the notice without injustice to either the appellants or the LPA.
7. Whilst the applicants may have referred to an ancillary residential use on the land during the LPA's investigations, it was incumbent on the LPA to correctly describe the breach of planning control as appeared to them. The LPA accepted at the Hearing that it was a misdescription. There was little objection from the LPA to the proposition that a notice against a material change of use could not be directed against an ancillary use. There was no suggestion that circumstances had changed between the time the notice was issued and the Hearing. Thus, it ought to have been clear to the LPA that referring to the alleged breach accordingly would have amounted to a misdescription at the time it issued the notice. To my mind, failing to acknowledge and rectify that up until the point it was raised at the Hearing amounts to unreasonable behaviour.
8. Moreover, such unreasonable behaviour has resulted in wasted expense for the applicants in the time spent preparing for the appeals against the notice, producing statements and appearing at the Hearing.

Conclusion

9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs in relation to Appeal References APP/X0360/C/23/3321237, APP/X0360/C/23/3321238 and APP/X0360/C/23/3321239 is therefore warranted.

Costs Order

10. 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 Mrs Angela Pidgeon, Mr Ian Pidgeon and Mr Robert Pidgeon the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicants are 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.

J Whitfield

INSPECTOR