



Costs Decision

Inquiry held 14 – 16 May 2024

Site visit made on 13 May 2024

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2024

Costs application in relation to Appeal Ref: APP/J0405/C/23/3320988 Land at Oving Road, Quainton, Buckinghamshire

- 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 the Buckinghamshire Council for a partial award of costs against Mr Jake Putnam (Putnam Construction Services Ltd).
 - The application is in connection with an appeal against an enforcement notice relating to an alleged material change of use of the land to a mixed use with associated operational development and the construction of buildings.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.
2. The application is made in respect of the appeal against the enforcement notice on grounds (b) and (d). The arguments advanced on behalf of both parties were set out in their written submissions. As such, I need not repeat them in any detail here.
3. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably in the appeal process and that behaviour resulted in the other party incurring unnecessary or wasted expense. The PPG lists examples of behaviour whereby an award of costs on substantive and/or procedural grounds may be justified. However, the list of examples should not be regarded as exhaustive.

Summary of the Council’s case

Ground (b)

4. The Council’s case on procedural grounds is that the appellant introduced the appeal on ground (b) late, only six weeks before the start of the Inquiry. Also, that the appellant’s case was not substantiated evidentially, and with some of the evidence in relation to the construction of buildings being misleading.

Ground (d)

5. The Council argues it was unreasonable for the appellant to pursue an appeal on ground (d) because his case was unsubstantiated in evidence; directly

¹ Paragraph 030 ref 16-030-20140306

contrary to what he had previously stated (in his PCN response); and relied upon information that was manifestly inaccurate or untrue.

Summary of the Appellant's case

Ground (b)

6. Although the ground (b) appeal could have been raised earlier the Council was put on notice of the point in advance of the exchange of evidence so that its officers could address it in proofs.
7. On substantive grounds it was not unreasonable to argue there were two planning units as this is a matter of planning judgment on a fact and degree basis. The appellant relied upon his own recollection of what was done and "opened up" the structure to allow the Inspector at the site visit to "look inside" to help to verify what he alleged. Whilst it is recognised that the appellant's case would have been stronger if supported by contemporaneous documentary evidence, it does not follow that it was unreasonable for him to appeal on the basis of his recollection alone.

Ground (d)

8. Notwithstanding there were inconsistencies in the appellant's evidence and very little documentary evidence to support continuity of the unauthorised storage use, it does not follow that it was unreasonable for the appellant to make the argument. There were witnesses who gave sworn evidence and that evidence of fact was tested during the Inquiry. While cross examinations exposed shortcomings in the lay evidence, that does not indicate the appeal on ground (d) was hopeless from the outset. The appeal was properly arguable, particularly given that almost all the contrary evidence relied upon by the Council was provided for the first time in its proofs (and rebuttals). When crafting the evidence base for ground (d), the appellant did not know what the Council 'had up its sleeve'.
9. Whilst the appellant could and should have been clearer in his evidence explaining how documentary evidence² came into his possession to be appended to his proof, the Inspector is invited to accept his explanation that it was a copy-invoice and properly reflects the cost of the works which were undertaken at his request.
10. Even if the case on the mixed use alleged was hopeless, it was not so for some of the hardstanding and for the maintenance building (M). On these elements, the Council agreed at the inquiry that these were immune under the 4 year rule. Therefore, it relied upon *Murfitt*³ to displace that rule and contend for the 10 year rule. These concessions were not made in the SCG or the Council's proofs. The confirmation that hardstanding areas 1-3 and 5 and building M were immune was made for the first time in cross examination of Ms Merritt.

Analysis

Grounds (b) and (d) – procedural grounds

11. With regard to procedural matters the ground (b) case was not apparent until disclosed in a letter to the Council and copied to the Planning Inspectorate,

² The invoice dated 27 April 2012 – Appendix 4 to Appellant's Proof of Evidence

³ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

following which my pre-Hearing note to the parties required the appellant to confirm the ground (b) appeal so that the Council could address it in their evidence, which they did so. Although it was procedurally unreasonable to submit late evidence in the appeal process, this procedural lateness, by itself, did not result in any unnecessary or wasted expense.

Grounds (b) and (d) – substantive grounds

12. The arguments raised by the appellant in the ground (b) appeal (referred to as key issues in my Inquiry opening comments, and also as detailed 'areas of disagreement' in the SoCG⁴) was that the office (O) and residential (R) buildings resulted from alterations to an existing stable building rather than erection of two new ones, and that building R was a single planning unit by itself such that the mixed use alleged had not occurred across the whole of the appeal site.
13. The appellant's ground (d) case was that buildings O, R and M and some of the hardstanding and bunding, and the residential use of building R, benefited from immunity from enforcement action due to the passage of time - 4 years.
14. These matters are undoubtedly a matter of planning judgment on a fact and degree basis, and in this regard I emphasise that such judgment is heavily reliant on the *accuracy* of matters of fact. Moreover, for the reasons set out in the appeal Decision (para. 4) the onus of providing precise and unambiguous evidence on grounds (b) and (d), tested on the balance of probabilities, falls to the appellant, rather than the Council.
15. For clarity, and contrary to the assertion in the appellant's costs response (referred to in paragraph 10 above) while the Council accepted that some of the hardstanding and bunds may have been more than 4 years old, the Council did not concede in any written or oral evidence that any of the operational development was immune from enforcement action. As such, I consider there was no late 'concession' with regard to the principle established in *Murfitt*; the onus of providing evidence to establish immunity was always for the appellant.
16. As I set out in the appeal Decision, the factual evidence submitted by the appellant in support of grounds (b) and (d), initially supplied to his appointed planning agent, and subsequently to the Inquiry, relied on his own and other witnesses oral evidence, and very little documentary evidence.
17. My conclusions that buildings O and R are two separate new buildings replacing what was once a single building, and the use of building R is part of a mixed use, are set out in the related appeal Decision (paras. 10-27). The finding that buildings O, R and M, the hardstanding and bunding, and the residential occupation of building R, were not immune from enforcement action is also set out in the Decision (paras. 28-50).
18. As detailed in the Decision, the oral evidence of the appellant and his witnesses was contradictory in itself, and was further contradicted by the Council's evidence. The appellant's documentary evidence was also heavily contradicted by the Council's evidence, conflicted with his own earlier response to a Planning Contravention Notice, and one of the submitted invoice documents was found to be false.

⁴ Statement of Common Ground – completed and signed 24 April 2024

19. The quality of the appellant's evidence overall was lamentably poor, very far from being precise and unambiguous, and particularly so given that the history of the site's use and evolution over the years should have been clear and known to him. It should have been obvious to him that the appeals on grounds (b) and (d) had no real prospect of success.
20. For these reasons I find the lodging of the appeal on grounds (b) and (d) amounted to unreasonable behaviour which resulted in unnecessary and wasted expense for the Council.

Costs Order

21. 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 Mr Jake Putnam (Putnam Construction Services Ltd) shall pay to the Buckinghamshire Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of the appeal on grounds (b) and (d) and this related application for costs; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Mr Jake Putnam (Putnam Construction Services Ltd), to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Thomas Shields

INSPECTOR