



Costs Decision

Inquiry held on 1-2 October 2024, and 11 November 2024 (virtual session)

Site visit made on 1 October 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2024

Costs application in relation to Appeal Ref: APP/X0360/C/24/3344473 Land known as Brookfield Farm, Old Wokingham Road, Crowthorne, Wokingham RG40 3BU

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wokingham Borough Council for a full award of costs against Mr Stuart Brooks.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the land from agriculture and equestrian to vehicle storage, vehicle repairs and restoration and general storage with ancillary office, the erection of 2 no buildings, the laying of hard-surfacing, and the erection of a wall and boundary treatments.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises¹ 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. Unreasonable behaviour can either be procedural² – relating to the process, or substantive³ – relating to issues arising from the merits of the appeal.
3. The applicant's case is made in relation to both grounds and can be summarised as follows:

Procedural

- a) Lack of co-operation in failing to provide information and responding to a planning contravention notice.
- b) Prolonging proceedings by introducing a new issue
- c) Providing information that is shown to be manifestly inaccurate or untrue; and
- d) Deliberately concealing relevant evidence at the pre-enforcement stage.

¹ PPG Paragraph: 030 Reference ID: 16-030-20140306

² PPG Paragraph: 047 Reference ID: 16-047-20140306

³ PPG Paragraph: 049 Reference ID: 16-049-20140306

Substantive

- a) Pursuing the ground (a) appeal in circumstances where the development is clearly not in accordance with the development plan.
 - b) Failing to provide evidence which stands up to scrutiny on grounds (a) and (d).
4. The applicant's case on procedural grounds fundamentally concerns matters relating to "building 2", both before and during the Inquiry. Taking matters chronologically, the Council first issued a Planning Contravention Notice (PCN) in relation to the appeal site in November 2020. Despite twice chasing for a response to the PCN, none was received. This resulted in a further copy being issued to Mr Brooks in March 2023. The information requested in the PCN was not provided as required.
 5. Officers from the Council subsequently visited the site in December 2023 and questioned Mr Brooks about the use of "building 2". He admitted at the inquiry that during the visit he told Officers that it *"was used as an office"*, and when asked why he had not advised them of its residential use he stated that this was *"because of the 4 year rule"*. It is clear therefore that Mr Brooks provided information which he knew to be inaccurate during the site visit.
 6. Whilst Mr Brooks' failure to respond to the PCN and his subsequent providing of false information could be said to be unreasonable and clearly did not assist the Council in their endeavour to establish the use of "building 2", it did not directly lead to the Council incurring any unnecessary or wasted expense in the appeal process. Not least because the Council could have utilised other methods, such as their right of entry under section 196A of the Town and Country Planning Act 1990, to establish the use of "building 2" prior to issuing the enforcement notice.
 7. The enforcement notice was issued on 22 April 2024 with the alleged breach of planning control including *"without planning permission, the material change of use of 'the land' from agriculture and equestrian to vehicle storage, vehicle repairs and restoration and general storage with ancillary office"*, and *"without planning permission, the erection of 2 no. buildings in connection with the unlawful use of 'the land'"*. At this point Mr Brooks will have been aware that, in so far as it related to "building 2", the allegation was incorrect.
 8. There followed several opportunities for Mr Brooks to detail the actual use of "building 2". These included the option to appeal against the notice on ground (b), or to subsequently highlight the issue and make his position (and appeal) in relation to "building 2" clear within the statement of case, at the Case Management Conference, within his written Proof of Evidence, or in the Statement of Common Ground. Mr Brooks chose not to do so.
 9. Not only did Mr Brooks fail to take several opportunities to reveal the true use of "building 2" but there also remained inconsistencies throughout. In his statement of case, it was said that *"Building 2 was erected for residential use. It has subsequently been in office use"*⁴. In his proof of evidence, he stated that *"Building 2 was erected for use as a studio flat. The enforcement notice alleges a use for general storage and ancillary office"*⁵, and that *"Building 2 was*

⁴ Page 3 of Appellant's Statement of Case

⁵ Page 11 of Mr Brooks Proof of Evidence

*erected for agricultural storage (when it was still in shipping container form) and then a studio flat*⁶. Furthermore, in Mr Rowe's proof of evidence in relation to the ground (a) appeal it is said that *"The appellant's office space is ancillary to the lawful uses on the site that he owns"*⁷. Nowhere within the written submissions was it made clear that the residential use was continuing at the date that the notice was issued, or that the ancillary office use alleged was incorrect. To my mind this amounts to unreasonable behaviour.

10. The consequence of this was that it was not until the first day of the inquiry, following the site visit and upon hearing Mr Brooks verbal evidence, that the issue concerning the residential use of "building 2" became apparent. This gave rise to a new issue during the inquiry concerning the potential need to correct or amend the allegation in the enforcement notice.
11. Following a short adjournment on the second day of the inquiry, Counsel for both parties agreed that the matter should be addressed in closings. However, to allow proper consideration of the issue and to make the necessary legal submissions it would now not be possible to draft the closings by the conclusion of day two. As a result, a third day was required (to be held virtually) for closing submissions. In my view, the appellant's unreasonable behaviour directly resulted in an additional inquiry day being required.
12. Had the true facts regarding the use of "building 2" been raised at a far earlier stage of the appeal process, as they should have been, then both parties would have been able to prepare their cases more accurately and appropriately. As it is, the inquiry proceedings were effectively prolonged by the discussion of "building 2" on the various grounds of appeal on the false understanding of its use as an "ancillary office". This was followed by the subsequent necessity to undertake further work mid-inquiry to resolve the issue concerning correcting the notice. This was both unnecessary and avoidable.
13. I acknowledge that, even if the Council had been aware of the residential use from the outset, there is no reason to suggest that an enforcement notice would not have been issued, or that any appeal would have not necessitated an inquiry. Nevertheless, it seems to me that had the evidence in relation to "building 2" been introduced earlier in the appeal proceedings, then matters could still have been completed within 2 days. The failure to produce this evidence also prevented the Council from correctly preparing their case in relation to "building 2" which, as can be seen from the appeal decision, has now been omitted from the enforcement notice red line in any event.
14. In relation to the applicant's substantive grounds, this is firstly made on the basis that the appellant was unreasonable for pursuing the ground (a) appeal. In the circumstances that Mr Brooks found himself in it was unsurprising that he exercised his right to appeal. He is also entitled to choose his grounds of appeal, provided they can be substantiated. In respect of the ground (a) written submissions in response to the reasons for issuing the notice were provided. These sought to demonstrate that the development was in accordance with the development plan, or in the alternative, that material considerations overcame any conflict.

⁶ Page 12 of Mr Brooks Proof of Evidence

⁷ Page 28 of Mr Rowe Proof of Evidence

15. Whilst I consider that the appellant's case on ground (a) was poorly constructed and articulated, I find that the case put forward was adequate. Although I have not agreed with the case made for the development, as set out in my decision, that does not make it unreasonable to have come to a different view. Despite the fact that I concluded that the development did not accord with the development plan, and material considerations did not outweigh that conflict, it does not follow that the ground (a) appeal had no prospect of success.
16. The applicant's substantive grounds also related to the failure of the appellant to provide evidence that stands up to scrutiny in relation to "building 2" under the ground (d) appeal. As a result, the applicant considers that the ground (d) appeal should have been withdrawn at an earlier stage, instead of being pursued resulting in a waste of inquiry time. I have already covered the evidence provided in relation to "building 2" and the subsequent prolonging of the inquiry proceedings above.
17. For the reasons set out above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. This relates to the prolonging of the inquiry proceedings, caused by a failure to provide the requisite evidence in relation to "building 2" prior to the first sitting day of the inquiry. Therefore, a partial award of costs is justified.

Costs Order

18. 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 Stuart Brooks shall pay to Wokingham Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the additional inquiry day held virtually on 11 November 2024, and the preparation of the Council's case in relation to "building 2", such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Mr Stuart Brooks, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Jones

INSPECTOR