
Costs Decision

Inquiry held on 6 September 2016

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 October 2016

**Costs application in relation to Appeal Ref: APP/X0360/X/15/3139117
Land at Hare Hatch Sheeplands, London Road, Hare Hatch,
Reading RG10 9HW**

- The application is made under the Town and Country Planning Act 1990, sections 195, 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 R Scott.
 - The inquiry was in connection with an appeal against the refusal of the Council to issue a certificate of lawful use or development for the retail sale of goods to the public.
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Decision

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

Preliminary matter

2. Given that the Appellant's Barrister was unable to be present at the inquiry, I agreed to accept a written application for costs from the Council and a written response to that application following the close of the inquiry and to an agreed set timetable.

The submissions for the Council

3. In brief, the Council says the appeal could not have succeeded due to the existence of an enforcement notice in force. That was made clear in the officer's report on the application, in the Council's statement of case for the appeal, and in legal submissions in response to those made for the Appellant. Pursuing the appeal despite the clear legal position represents unreasonable behaviour which has resulted in wasted expense. The Appellant was put on notice that an award of costs would be sought.

The response for Mr R Scott

4. In brief, the Appellant says he thought he had reached an agreement with the Council whereby if he withdrew his appeal against the enforcement notice this application for an LDC would receive favourable consideration. This turned out not to be the case despite the Council taking a great many months to consider the application and it is that enforcement notice which is now in force.
5. It was not unreasonable for the Appellant to ask the Inspector to consider whether, but for the enforcement notice, the LDC application would have succeeded as this would assist the courts in on-going matters related to injunctions. This is especially so where the Council misled the Appellant and

enticed him to withdraw his appeal against the enforcement notice. It was not unreasonable for the Appellant to seek an adjudication by a Planning Inspector, that being the only avenue of challenge available

Reasons

6. The Planning Practice Guidance 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.
7. In an appeal made under s195 of the Act, subsections (2) and (3) set out the remit of the Secretary of State (or his appointed person) which is to issue an LDC or not depending on whether the decision of the local planning authority is found to be well-founded or not well-founded. That is clear and would be known to the Appellant's professional advisors as would the effect of an enforcement notice in force on any claim of lawfulness. The appeal had no prospect of success.
8. The Appellant's request that I consider what might have been had the notice not been in force is not relevant to the matter before me as it could not have changed the inevitable outcome that the Council's decision was well founded. Similarly, the actions of the Council leading to the submission of the application for the LDC are also not a matter that can influence the decision as to whether the use was lawful on the date of the application. The matters were not pertinent to my considerations and this must have been obvious to the Appellant's team.
9. Pursuing the matter to appeal when there was no prospect of success was unreasonable behaviour on the part of the Appellant resulting in unnecessary, wasted expense for the Council and a full award of costs is justified.

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 Mr R Scott shall pay to Wokingham Borough Council, 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 applicant is now invited to submit to Mr R Scott, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B M Campbell

Inspector

DOCUMENTS

- 1 Council's written application for costs
- 2 Appellant's response