
Costs Decisions

Site visit made on 15 September 2020

by Paul Dignan MSc PhD

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

Decision date: 2 November 2020

Costs applications in relation to Appeal Refs: APP/X0360/C/19/3234843 and APP/X0360/C/19/3229306

Plot B, Land at the Coombes, Coombes Lane, Barkham, RG2 9JQ.

- 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).
 - **Application A** is made by Mr D Thomson for a partial or full award of costs against Wokingham Borough Council.
 - **Application B** is made by Wokingham Borough Council for a full award of costs against Mr D Thomson.
 - The appeals were against enforcement notices alleging the erection of a building (**Appeal A**) and engineering works to form an access (**Appeal B**).
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Decisions

Application A

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

Application B

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

Preliminary matters

3. The appeals were originally to be dealt with by written representations, but this was changed to the public inquiry procedure on review by the appointed Inspector following a request by the Council. The Inquiry was due to open on 24 March 2020, but was postponed due to the Covid-19 situation. I subsequently reviewed the procedure at the appellant's request and decided that the appeals could be determined by the written representations procedure.
4. Costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary and wasted expense in the appeal process.

Application A

5. The appellant submits that the entire appeal costs for Appeal A and Appeal B are wasted and unnecessary. It is submitted that had the Council made appropriate enquiries and had regard to well-known and long-standing authorities, the enforcement action would not have been taken and the appeals would not have been necessary. It is also asserted that the Council acted unreasonably in the course of the appeals by concealing relevant evidence.

6. The 'appropriate enquiries' point relates to some details of the construction of the Appeal A building, its use and what it considered to be domestic items on the land. It is claimed that their failure to formally inspect the building led them to make incorrect assumptions, as did their interpretation of the purpose of an outdoor table and rudimentary fireplace. In my view none of these matters had any real bearing on the substance of the Council's case that the plot did not benefit from forestry permitted development rights and that the building was not reasonably necessary for the purposes of forestry. They were no more than observations that the Council was entitled to make. All that further investigations would have revealed is that the building was not insulated, which is a very minor point.
7. The 'authorities' argument is essentially an argument that the Council misdirected itself. This is founded in part on the view that the Council impermissibly implied various limitations on the terms of GDPO Schedule 2 Part 6 Class E, contrary to the judgement in *Sykes*¹. These were that there should be a minimum land area, or a need for economic activity, or viability/profitability considerations. The Council did not argue that there was a minimum land area, but matters of extent and economics are valid considerations and not implied limitations. Arguments or assertions that other cases and appeal decisions relied upon were either wrong or wrongly interpreted were not substantiated.
8. The 'concealment' argument relates to communications between the Council's tree officer and the Forestry Commission regarding coppicing, the proposal to upgrade the by-way passing the site, and a planning application nearby. The communications with the Forestry Commission I would characterise as no more than seeking a general view on the validity of tree works proposals from a TPO perspective. It does not appear to have been specifically for the purposes of these appeals. Suffice to say that I consider these allegations to be baseless, but in any case the Greenways proposals and the nearby planning application would only have been relevant to Appeal C, which is not the subject of these costs applications.
9. Finally, it is suggested that a more helpful approach on the part of the Council would probably have resulted in either the appeals being avoided altogether, or the issues to be considered being narrowed, thus reducing expense. However, there is ample evidence in the copious communications submitted that the Council engaged satisfactorily with the appellant, and he has been aware of the Council's position at all times, but chose to ignore it and proceed with the developments. The Council's decision to take enforcement action was entirely reasonable, and I find nothing unreasonable in its conduct of the appeals. An award of costs against the Council, either full or partial, is not therefore warranted.

Application B

10. The Council alleges unreasonable behaviour on both procedural and substantive grounds. On procedural grounds, it suggests that the appeals were primarily a vehicle to criticise the Council, while a failure to agree a statement of common ground is also cited. On the first point, I consider that much of the material submitted by the appellant had little relevance, and was at times woefully repetitive, but although it frequently went close to the line of being so

¹ *Sykes v. Secretary of State for the Environment and another* (1981) 42 P&CR 19

irrelevant as to be unreasonable, it remained just within the bounds of acceptability. I do not accept that criticism of the Council was the primary purpose of the appeals, though the submissions were littered with gratuitous and often ill-founded interpretations. On the issue of the statement of common ground, it is evident that there was extensive discussion, but ultimately little in the way of common ground, so its production would not have saved expense.

11. On substantive matters, it is argued that the appropriate way to proceed would have been for the appellant, having been through the prior approval process for the building but having been made aware of the Council's position, would have been to apply for an LDC for the works. However, it is clear that the Council would have refused an LDC in any case, so similar appeals would inevitably have followed. The appellant would not have been at risk of his works being undone, but that is a matter for him.
12. Finally, it is submitted that it was clearly unreasonable of the appellant to maintain that a two-storey, insulated (though it is not) building equipped with solar panels and a vehicle access are reasonably necessary for the purposes of forestry on a woodland plot of this size, and that ultimately the appeals were hopeless. I have some sympathy with this argument, but it is also clear from the evidence that the appellant genuinely views what he is doing as forestry, and considers such a building to be reasonably necessary for that purpose. I did not agree, but I did not consider the arguments put forward to be irrational, particularly as the term 'forestry', at least so far as it is used for planning purposes, is open to interpretation.
13. For these reasons I consider that the conditions necessary for an award of costs against the appellant are not demonstrated.

Paul Dignan

INSPECTOR