



Costs Decision

Hearing held on 4 May 2011

Site visit made on 4 May 2011

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 17 May 2011

Costs application in relation to Appeal Ref: APP/M3645/C/10/2143195 Starline Farm, Starborough Road, Marsh Green, Edenbridge, TN8 5RB.

- 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 Mr John Taylor for a full award of costs against Tandridge District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging a failure to comply with condition 4 attached to planning permission no. TA/2005/635 granted by the Council on the 7 February 2006.
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Costs application in relation to Appeal Ref: APP/M3645/A/10/2139497 Starline Farm, Starborough Road, Marsh Green, Edenbridge, TN8 5RB.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr John Taylor for a full award of costs against Tandridge District Council.
 - The hearing was in connection with an appeal against the refusal of an application for a variation of condition 4 (relating to agricultural occupancy) on permission TA/2005/635 and the substitution of the model agricultural occupancy condition.
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Decision

1. I allow the application for an award of costs in the terms set out below.

The submissions for Mr John Taylor

2. The submissions on behalf of Mr Taylor were made in writing. In essence it is claimed that the Council's actions in issuing the breach of condition notice and refusing to substitute the model agricultural occupancy condition for the specific condition 4 imposed on TA/2005/635 amounted to unreasonable behaviour and caused the appellant unnecessary expense in having to pursue the appeals. It is claimed that the Council's actions are in conflict with national planning policy and advice in Circulars.

The response by the Council

3. The Council's response was made orally at the Hearing. The Council said that the action in imposing the original condition no. 4 was reasonable as it resulted from the case that the appellant had put forward to justify the house as it demonstrated exceptional agricultural need for someone to live at Starline Farm at all times. The needs of the fish farming enterprise were particular and unusual and this justified the specific condition and such a linking to these

special circumstances of the case is supported in Circular 03/2009 which acknowledges that model conditions are not always appropriate.

4. In relation to the planning appeal (B), the Council were not oblivious to Mr Taylor's personal circumstances, but to a large extent, these personal circumstances were irrelevant to the case as Circular 11/95 and PPS 7 make clear, it is the requirements of the agricultural enterprise that are important rather than the personal circumstances of an individual. In any event, the Council had not been provided with any authoritative evidence on the medical aspects, and there was also an absence of evidence on the economic viability of the holding to demonstrate that it was not likely to be sold/let to another party who would or could meet the terms of the specific occupancy condition. In the absence of reasonable evidence on the issue of viability, the period of compliance with the notice of 6 months is not unreasonable as the property could be vacated in a lesser period and the breach remedied.

Reasons

5. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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.
6. Circular 11/95 on the "Use of Conditions in Planning Permissions" in respect of agricultural dwellings says that where circumstances allow a house for an agricultural worker, a condition should be imposed to ensure that the dwelling is kept available to meet this need and a model condition on occupancy is recommended. The Circular goes on to say that "it should not be necessary to tie occupation of the dwelling to a worker engaged in one specific farm ...business even though the needs of that business justified the provision of the dwelling". It goes on to state that the model condition will be sufficient to avoid proliferation of dwellings even if the needs of the specific business change. In this case, the Council's action in imposing condition no. 4 was clearly contrary to that advice and I found that there was no special and precise justification for it. I also found that the requirements of the condition was unnecessary and unreasonable and thus failed two of the critical tests set out in the Circular. I concluded that the house could reasonably have been permitted in the original decision resulting in permission TA/2005/635 with the model agricultural occupancy condition imposed.
7. The Council's action therefore amounted to unreasonable behaviour as it did not take proper account of national longstanding planning guidance and resulted in the appellant having to lodge an appeal that was unnecessary.
8. In respect of the appeal against the breach of condition notice and its requirement that the appellant and family vacate the property within 6 months, I can see no evidence that the Council followed the general procedure set out in Circular 10/97 whereby proper consideration had to be given to the effect of this on the appellant's personal circumstances. The duty at that stage lay with the Council to seek and carefully weigh up such matters and by that time there was an appeal already lodged against the Council's formal refusal to substitute a model occupancy condition in place of the specific condition no. 4. where the appropriateness of this condition would have been assessed. The Council's action in pursuing the Breach of Condition Notice, in these combined circumstances, was therefore unreasonable and resulted in the appellant having to respond to a further appeal which was unnecessary.

9. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in Circular 03/2009 has been demonstrated and that a full award of costs is justified.

Costs Order

10. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Tandridge District Council shall pay to Mr John Taylor, the costs of the appeal proceedings such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned two appeals more particularly described in the heading of this decision.
11. The applicant is now invited to submit to Tandridge District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

David Murray

INSPECTOR