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Your Ref: 09/0220/EUSE

Our Ref: APP/H0738/C/12/2173997/8

Date: 5 March 2013

Dear Sir

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 174 AND 322A
LAND AT GROVE STABLES, FOREST LANE, KIRKLEVINGTON, YARM
APPEALS BY MR PETER HODGSON AND MRS KAREN HODGSON
APPLICATIONS FOR COSTS

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspectorate's letter of 21 September 2012 confirming withdrawal of the appeals by Mr Peter Hodgson and Mrs Karen Hodgson. The appeals, concerning land described above, were against Stockton-in-Tees Borough Council's issue of an enforcement notice dated 6 March 2012. The notice alleged a breach of planning control on land described above by *"The change of use of a stable block and barn to residential dwellings without planning permission"*.

2. With apology for any delay this letter deals with the Council's and the appellants' applications, against each other, for an award of costs. The Council's written costs submissions were dated 26 September and 16 October 2012. The appellants' submission dated 8 October 2012 was via their agents, William Graham Law (Solicitors). As these representations have been made available to the parties, it is not proposed to summarise them in full. They have been carefully considered.

Summary of the decisions

3. The formal decisions are at paragraphs 18 below. Both costs applications fail and no award of costs is being made in favour of either party.

Basis for determining the costs application

4. In enforcement notice appeals the parties are normally expected to meet their own expenses irrespective of the outcome of the appeal. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.

5. Section 322A of the Town and Country Planning Act 1990 enables the Secretary of State to award costs against any party whose "unreasonable" behaviour directly results in the late cancellation of an inquiry or hearing, so that expense incurred by any of the other

parties is wasted. Published policy guidance is in CLG Circular 03/2009 (referred to below as the Costs Circular). The application for costs has been considered in the light of this guidance, the appeal papers, the parties' costs correspondence and all the relevant circumstances.

Reasons for decision

(i) The Council's costs application

6. The costs application for a full award of costs. The nub of the application is that the appellants acted unreasonably by failing to provide essential evidence at an earlier stage, despite requests from the Council, to support the claim that the properties had been resided in for a period of four years or more. If the information submitted with the appellants' proofs of evidence had been made available to the Council much earlier appeal expense could have been avoided.

7. In response the appellants' Solicitors pointed out that the appellants were not professionally represented prior to the appeal and that, as evident from their response to Planning Contravention Notices (PCN), they had limited knowledge of the planning process. The appellants' appeal statement disclosed their case in relation to both buildings and this was followed up by proofs of evidence in accordance with the Inspectorate's timetable. The appellants did not submit late evidence.

Conclusions

8. The decisive issue is considered to be whether or not the appellants acted unreasonably in withdrawing the appeals with the result that the Council incurred wasted expense in preparing to resist them at a local inquiry. The guidance at paragraphs A12, A23, B6 and B47 of the Costs Circular is particularly relevant.

9. The circumstances leading to the issue of the enforcement notice are provided in the appellants' costs submission (first page). The Council have not taken issue with this account. It is apparent that the building development and conversion to residential use concerning the relevant buildings had occurred over a number of years. It was therefore important for the Council to establish an evidential basis for what had happened and when. To this end it appears that since 2003, when the Council became aware that building A (Prospect Cottage) was in residential use, the Council have been seeking information from the appellants to demonstrate a continuous (underlining added for emphasis) residential use. And similarly, since becoming aware of the residential use of the building B (the Barn – Prospect Villa), the Council have been seeking evidence to establish a continuous residential use. In the process there have been ongoing communications including discussions and site meetings between Council officers and the appellants. In this respect it is considered unfortunate that there were abortive attempts concerning the submission of a retrospective planning application and application for a lawful development certificate. If these applications had proceeded the service of an enforcement notice, and subsequent appeals, might have been avoided.

10. It is noted that two PCNs were served (in 2009 & 2010) with specific reference to Prospect Cottage although information was also sought regarding details of the uses of all buildings on the site. The Council were not aware of building B (the Barn) at the time of the PCNs but they became aware of it following a site inspection on 11 April 2011.

11. Having considered the available information and circumstances the Secretary of State considers that this is not a case where the appellants have acted in a wholly unco-operative or wilful manner with a view to deliberately withholding information from the Council.

Rather, the view is taken that there was a genuine communication difficulty on the part of the appellants regarding evidence required of continuous use when the commencement of the residential use of the buildings concerned had appeared (to them) to render the buildings immune from enforcement action. Besides the complexity of the situation an important factor in reaching this conclusion is that the appellants were not professionally represented at this stage.

12. Once the enforcement notice was served the appellants obtained professional help and the appeals were made in order to protect their position. Given the relevant timescales it seems unlikely that the appellants' Solicitors could have familiarised themselves with the relevant circumstances and assembled evidence to put to the Council with a view to them withdrawing the enforcement notice before the expiry of the period for appealing. Arguably, the information could not have been assembled quicker than it was during the course of the appeals.

13. For these reasons the Secretary of State concludes that an award of costs against the appellants on grounds of unreasonable behaviour resulting in unnecessary expense is not justified.

(ii) The appellants' costs application

14. The decisive issue is considered to be whether or not the Council acted unreasonably by issuing the enforcement notice (subsequently withdrawn) without proper investigation with the result that the appellants incurred wasted expense in appealing. The guidance at paragraphs A12, B32 to B40 and B55 of the Costs Circular is particularly relevant.

15. While the Council may have been aware of residential use of building A for a considerable period the available evidence does not indicate that they failed to carry out a proper investigation. Building B might not have been specifically mentioned in the PCNs because they were not aware of it at that time but, in any event, they held the expectation (in relation to question 9 of the PCN) that details of the uses of all buildings forming the site would also have been provided. The Council proceeded to carry out a full site inspection in April 2011 when it became apparent to them that an additional unauthorised dwelling was present on the site. In the light of this, and the protracted process in having already attempted to obtain relevant information from the appellants, it is not considered unreasonable for the Council to consider it expedient to take enforcement action in respect of building B as well as building A.

16. While the appellants suggested that the evidence contained in the proofs of evidence could have been requested by the Council much earlier, because it had been referred to in the appellants' appeal statement, it is not clear that the relevant information could have been provided any sooner than it was. Furthermore it is noted that neither party asked for the appeal proceedings to be deferred, prior to the submission of proofs of evidence, in order for the information to be put to the Council for consideration.

17. For these reasons the Secretary of State concludes that an award of costs against the Council on grounds of unreasonable behaviour resulting in unnecessary expense is not justified.

FORMAL DECISIONS

18. For the reasons given above the Secretary of State considers that this is a case where the evidence does not clearly point to unreasonable behaviour by either party. He concludes that the parties should bear their own appeal expenses. Both costs applications are therefore refused.

19. There is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

20. A letter in similar terms has been sent to the appellant's Solicitors.

Yours faithfully

JOHN GARDNER
Authorised by the Secretary of State
to sign in that behalf