

Appeal Decisions – Eastern 10 February 2016 – Update Report

Waverley Reference	Site Address	Officer Rec	Committee or Delegated	Appeal Decision	Summary of Inspector's comments
<p>CR/2013/0030</p> <p>Costs Decision – appended to this report</p>	<p>Site: Astra House, The Common, Cranleigh</p> <p>Development: Change of use from Class B1a (office) to Class C3 (residential) use.</p> <p>Issues:</p> <ul style="list-style-type: none"> • Whether the Council has behaved unreasonably and thereby caused the appellant to incur unnecessary or wasted expense in the appeal process. 	<p>Refusal</p>	<p>Delegated</p>	<p>Dismissed 11/12/2015</p>	<ul style="list-style-type: none"> • An application for a partial award of costs was made by the Appellant at the hearing due to the Council's late introduction of a altered argument for refusing the application, wherein the Council cast doubt on whether the office element of the mixed use of the building was lawful. • The Hearing was subsequently adjourned and the Inspector found that this had resulted in the appellant preparing for and attending a Hearing which could not proceed. • This caused unnecessary expense and resulted in unreasonable behaviour. A partial award of costs to the appellant was therefore made.

* Appeal decisions may be viewed on the website

This page is intentionally left blank

Costs Decision

Hearing opened and adjourned on 1 July 2014

Inquiry held on 24 November 2015

Site visit made on 24 November 2015

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 11 December 2015

Costs application in relation to Appeal Ref: APP/R3650/W/14/2215111 Astra House, The Common, Cranleigh, Surrey GU6 8RZ

- 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 H Robbie for a partial award of costs against Waverley Borough Council.
 - The appeal was against the refusal of prior approval for change of use from Class B1a (office) to Class C3 (residential) use.
-

Decision

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

The submissions for Mr H Robbie

2. These are in writing, Documents A14 and A15 of the accompanying Appeal Decision.

The response by Waverley Borough Council

3. These are in writing, Document C4 of the accompanying Appeal Decision.

Reasons

4. 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.
5. The application for a partial award is concerned with the expense of preparing for and attending the Hearing on 1 July 2014, due to the Council's late introduction of a further, or altered, reason for refusal or objection to the proposed change of use. The original reason for refusal was clear; the building was in a mixed use and change of use under the then Class J would not be lawful.
6. Soon before the Hearing the Council introduced a new argument, which effectively cast doubt on whether the office element of the mixed use itself was lawful. This left the appellant, and hence the Inspector, with the need to seek further information which it was agreed could not be done immediately. An adjournment was sought by the appellant and not objected to by the Council, and the Inspector chaired a discussion on the way forward. The letter from the Planning Inspectorate of 2 July 2014 was intended as a record of that

- discussion, and not as any suggestion of the way forward for either party, this was left to the parties to discuss and respond accordingly.
7. For the purposes of this Costs Decision it does not matter what happened next, or what did not happen, or why. The application concerns the need for the appellant to prepare for and attend a Hearing that could not proceed and this put the appellant to unnecessary expense. The reason why the Hearing could not proceed was that the grounds on which the appellant, and the Inspector, had prepared for the event had been so changed as to leave the Inspector with no option than to agree to an adjournment of that event. The avoidance of the need for evidence under oath at the Inquiry, by way of Statutory Declarations; the apparent lack of action during the adjournment; and the eventual outcome of the Appeal do nothing to indicate that there was any other option than to adjourn on 1 July 2014, a course of action that Inspectors do not take unless absolutely necessary.
 8. The cause of the unnecessary expense was the unreasonable behaviour of the Council in *'introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen and prolonging the proceedings'* and *'by introducing a new reason for refusal'* as warned against in the web-based Planning Practice Guidance at Paragraph: 047 Reference ID: 16-047-20140306.
 9. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and a partial 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 Waverley Borough Council shall pay to Mr H Robbie, the costs of the appeal proceedings limited to those costs incurred in preparation for and attendance at the Hearing of 1 July 2014; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
11. The applicant is now invited to submit to Waverley Borough 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.

S J Papworth

INSPECTOR