
Costs Decision

Site visit made on 26 January 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 20 March 2017

Costs applications in relation to Appeal Ref: APP/P0119/C/16/3158518 Land at the Car Wash, 78 Gloucester Road, Almondsbury

- 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 Cost Application is made by Mr Christopher Booy against South Gloucestershire Council for a full award of costs.
 - The appeal was against an enforcement notice alleging a change of use of land from general industrial use (Use Class B2) to hand car wash use (Sui Generis) without the benefit of planning permission.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The PPG advises that local planning authorities are expected to behave reasonably in relation to procedural matters at the appeal. An example of such behaviour which may result in an award of costs is a lack of co-operation with the other party. Moreover the PPG states that for enforcement action, the local planning authority must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate. Both of these have been alleged by the appellant.
 4. Section 172(1) of the Act states that the local planning authority may issue a notice where it appears to them that there has been a breach of planning control, and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
 5. Before issuing the notice the Council carried out an investigation which included a face to face meeting and a number of letters, emails and site visits. There is no evidence before me to suggest that the Council's investigation or its communication and co-operation with the appellant were not sufficiently diligent such that the need to serve the notice could have been avoided or that an appropriately conditioned planning permission could have been granted.
-

6. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The appellant contends that the Council failed to produce evidence to substantiate its reason for issuing the notice in relation to the effect on the neighbours' living conditions regarding noise and disturbance. Also, that the Council's reason for issuing the notice in this regard was based on generalised or inaccurate assertions about the development's impact, which was unsupported by any objective analysis. In addition, the Council has acted unreasonably by not determining similar cases in a consistent manner.
7. In terms of the impact of the development on the living conditions of residents it is clear that there is a difference in judgement between the appellant and the Council. From the evidence I see no reason to doubt that the Council judged the impact of the development on the neighbours' living conditions properly which included a number of site visits by the Council's enforcement officer which would have enabled the officer to appreciate the relationship between the appeal site and the neighbouring property. The Council has provided sufficient evidence to support its reason for issuing the notice in this regard, which is based on reasonable planning grounds. In particular, by reference to the development plan, the National Planning Policy Framework and other material considerations, the Council has adequately demonstrated how it considers that the development causes harm to the living conditions of nearby residents having regard to noise and disturbance.
8. As detailed in my Decision, the circumstances of the car wash at 94 Gloucester Road are not directly comparable to those of the appeal site and the matter of expediency is one for the Council to decide. In this particular case I have found that the development is inappropriate development in the Green Belt which results in a loss of openness and is harmful to the living conditions of nearby residents having regard to noise and disturbance. Taking into account the considerations in favour of the development including its economic benefits I have found that the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.
9. I do not consider that the Council have behaved unreasonably in either the procedural or substantive matters of this case and I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Elizabeth Jones

INSPECTOR