
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 South Gloucestershire Council for a full award of costs against Mr Christopher Booy.
 - 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.
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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. Permission to operate the hand car wash on an area of land at the front of the industrial estate was dismissed by a previous Inspector Ref: APP/0119/W/15/3003615 dated 6 May 2015. Following the previous Inspector's decision an enforcement notice¹ requiring the use to cease and the removal of all associated structures was complied with and the car wash was moved to its current location at the rear of the industrial estate, an area of land not covered by either the previous Inspector's decision or the enforcement notice².
4. By relocating from one area of the industrial estate to another the Council considers that the landowner has used delaying tactics and appealed the present enforcement notice with no new grounds to do so. This, the Council considers constitutes unreasonable behaviour resulting in unnecessary costs to the Council.
5. The appellant contends there are material differences between this case and the previous appeal in that the previous appeal and the enforcement notice related to a different area of land with a different planning history and background, the involvement of different Planning Consultants and that moving

¹ COM/13/0641/OD/2.

² COM/13/0641/OD/2.

- to the rear of the industrial estate mitigated the concerns of the previous Inspector.
6. The PPG states that "an appellant is at a risk of an award of costs being made against them if the appeal or ground of appeal has no reasonable prospect of succeeding. This may occur when:...the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period"
 7. Whilst I note that there has been no change in Local, National Planning Policy or Green Belt policies, the current appeal is different to the previous appeal in that it is on a materially different area of the industrial estate the suitability of which for use as a car wash has not been considered previously by the Council.
 8. Having regard to the previous appeal decision I acknowledge that the current appeal is based on very similar grounds in relation to the Green Belt and as indicated in my decision, I concur with the findings of the previous Inspector in that the development is inappropriate development which results in a loss of openness. However, the reasons for issuing the current enforcement notice³ albeit for the same unauthorised development are materially different as they introduce the issue of the effect of the development on the neighbours' living conditions having regard to noise and disturbance.
 9. The relocation of the car wash to the rear of the industrial estate has resulted in a material change in circumstance since the previous Inspector's decision and enforcement notice⁴. Thus, whilst I have found that the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist and the development results in harm to the neighbours' living conditions, I do not consider that the appellant behaved unreasonably in bringing this appeal.
 10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Elizabeth Jones

INSPECTOR

³ COM/13/0641/OD/6.

⁴ COM/13/0641/OD/2.