

Costs Decision

Inquiry held on 10 and 26 January 2017

Site visit made on 26 January 2017

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 04 April 2017

Costs application in relation to Appeal Refs: APP/B1550/C/16/3148833, 3148834 & 3148835

24 Golden Cross Road, Rochford SS4 3DG

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Alpine Taxis Ltd, Mr Peter Richmond and Mrs Carol Richmond for a full award of costs against Rochford District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging 'Without planning permission, the material change of use from mixed use for residential and taxi business, with up to 4 taxi vehicles parked on or close by to the site, to a mixed use of residential and taxi business with 5 to 7 taxi vehicles parked on or close by to the site.'
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The application for costs and the rebuttal were made in writing although both parties added to their written comments at the Inquiry. These are set out below.

Council's further comments

3. Miss Dunn attended the site on 6 and 24 November 2015 and left cards with contact details. The telephone call between Miss Dunn and Mr Richmond on 3 December 2015 went round in circles and Mr Richmond was evasive.
4. The applicants state that Council did not revisit its position in the light of evidence submitted. That evidence focused on Hackney Carriage and Private Hire Vehicles and not the storage of decommissioned vehicles. The Council was not unreasonable in its actions and was reasonable in pursuing enforcement action.

Applicants' further comments

5. The appellants, in their final comments on their costs application, stated that the Council alleged a lack of cooperation. However, it is for the Council to investigate adequately. This did not happen and the Council were not clear what to assess prior to issuing the Enforcement Notice. The appellants accept that the Miss Dunn did speak with the vehicle licensing officers of the Council.
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6. Mr Richmond did telephone Miss Dunn and if things were outstanding it should have been followed up in writing. The appellants' position in relation to private hire vehicles and hackney carriage vehicles was clear and was set out in comments to the Council. The Council failed to understand the types of licensed and unlicensed vehicles associated with Alpine Taxis Ltd.

Considerations

7. The Planning Practice Guidance (PPG) 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.
8. The PPG advises that a local planning authority must carry out adequate prior investigation. A Council is 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 ensure that it was accurate. It also advises that cases should be reviewed as part of on-going case management¹.
9. The Council state that the appellants did not cooperate with the investigation. Whether or not that is the case the Council has a wide range of powers at its disposal to investigate alleged breaches of planning control. While I appreciate a large number of site visits were undertaken, no car registration numbers were recorded, on most occasions no photographs were taken and only interaction was undertaken with Mr Richmond. I appreciate there was some liaison with the Hackney Carriage Licensing Team, however specific vehicles were not cross referenced with the information held by the Council to ascertain if they remained licensed vehicles or were actually 'other vehicles' associated with the taxi business.
10. The Council accept that its Officers did not appreciate the difference between a licensed vehicle and an unlicensed vehicle when carrying out site visits and recording the number of 'taxi vehicles' in and around the appeal site. The Council chose to draft the allegation to specifically refer to taxi vehicles thus targeted only licensed vehicles.
11. The Council acknowledge in its evidence that Mr Richmond raised the 'taxi definition' in a phone conversation on 3 December 2015 and referred to Private Hire Vehicles and non-licensed vehicles waiting to be sold. The appellants raised the issue of what constitutes a 'taxi' in their final comments submitted on 4 July 2016. However, despite this matter being raised by Mr Richmond before the enforcement notice was issued and at final comments stage by the appellants, the Council failed to consider whether or not reference to 'taxi vehicles' in the allegation was what was of concern to them in relation to how the taxi business was being operated. The Council also failed to review its case in the light of the final comments.
12. The Council did state what it considered fell within the term 'taxi vehicle' which included Hackney Carriages and Private Hire Vehicles, but it did not differentiate between licensed and unlicensed vehicles in its evidence. The previous enforcement notice allegation identified a wider range of vehicles associated with the taxi business; however this was not followed in the drafting

¹ While the PPG specifically refers to this in relation to appeals against refusals of planning permission, non-determination or removal or variation of conditions I consider it is equally applicable to the current case.

of the allegation used in the enforcement notice the subject of the current appeal. Evidence collected by the local residents, which was relied on by the Council, again did not differentiate between licensed and unlicensed vehicles

13. The Council, in my view, failed in its collection of evidence to appreciate that vehicles with the license plate removed were unlicensed vehicles and could no longer be referred to as taxi vehicles. It therefore failed to investigate what the various vehicles, in and around the site, were being used for in relation to the taxi business and thus it failed to diligently investigate the matter at hand.
14. I have concluded in the appeal decisions that that there has not been a material change of use in the terms alleged in the enforcement notice the subject of the appeals. This is directly related to the failure of the Council to appreciate, due to failings in the investigations and the narrow focus of the allegation, what constituted a taxi vehicle. This led to the quashing of the enforcement notice as a result of the ground (c) appeal. I therefore find that the behaviour of the Council in failing to diligently investigate the matter prior, or even subsequent, to issuing of the enforcement notice was unreasonable. This has resulted in the unnecessary expense for the appellants of the whole appeal process.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

16. 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 Rochford District Council shall pay to Alpine Taxis Ltd, Mr Peter Richmond and Mrs Carol Richmond the costs of the appeal proceedings described in the heading of this award; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. Alpine Taxis Ltd, Mr Peter Richmond and Mrs Carol Richmond are now invited to submit to Rochford District Council to whom a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

Hilda Higenbottam

Inspector