
Costs Decision

Site visit made on 16 May 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 22 June 2017

**Costs application in relation to Appeal Ref: APP/N4205/C/16/3165494
Al Hira Banqueting Hall, 40 Mossfield Road, Farnworth, Bolton, Lancashire
BL4 0AB**

- 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 application is made by Mr N Parvez for a full award of costs against Bolton Metropolitan Borough Council.
 - The appeal was against an enforcement notice alleging without planning permission the material change of use from social club (*sui generis*) to function suite (Use Class D2).
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Decision

1. The PPG¹ advises that irrespective of the outcome of an appeal, 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.
2. Awards against Councils may be either procedural in regard to behaviour in relation to completing the appeal process, or substantive, which relates to the merits of the appeal. The appellant's application is made on the basis of unreasonable behaviour in relation to substantive matters.
3. I summarise the appellants grounds as follows:
 - (i) the Council misinterpreted Class D2 of the Use Classes Order, seeking corrections to the enforcement notice, and which left little time for the appellant to respond;
 - (ii) the Council were wrong to pursue enforcement proceedings given that there was no breach of planning control, or alternatively that planning permission was justified;
 - (iii) the Council's decision to take enforcement action was erroneous and unlawful given that they previously held the view (prior to validating planning application 90164/13) there would be no change of use;
 - (iv) the Council's decision to enforce was inconsistent with its previous planning decisions;
 - (v) the Council failed to properly engage with the issues in a lawful and reasonable manner by not responding to a request to supply appeal

¹ Planning Practice Guidance

decisions which supported their contention that the previous and current uses did not fall within Use Class D2;

- (vi) the Council has failed to explain why the appeal decisions supplied by the appellant were incorrectly decided or different to the present circumstances;
 - (vii) the Council should have granted planning permission through the retrospective planning application;
 - (viii) the Council have failed to provide evidence that the current use involves greater noise and parking than the previous use - the fall-back position.
 - (ix) The Council accepted the appellant's highways evidence and failed to substantiate their own highway safety objection to the development. It was unnecessary for the appellant's Highways consultant to attend the Hearing.
4. The Council's verbal response is broadly that there was a material change of use resulting in a breach of planning control. Also, due to the harm to residential amenity evidenced by local residents it was considered expedient to issue the enforcement notice. As such, the council did not act unreasonably.

Reasons

5. The corrections to the notice in removing the references to the D2 Use Class and "sui generis" did not affect the appellant's ability to continue to make the same two alternative arguments as advanced in his original grounds of appeal submitted to the Inspectorate; that both uses fell within use Class D2, or there was in any event no material change of use. I address this at paragraphs 7-10 of the appeal decision. As such, there was therefore no unreasonable behaviour in respect of the appellant's ground (i) above.
6. In an appeal on ground (c), one of the legal grounds of appeal, the burden of proof is upon the appellant (not the Council) to demonstrate, that there has not been a breach of planning control. The test of the evidence is the balance of probability. In this regard, I have dismissed the appeal on ground (c), refused to grant planning permission on ground (a) and upheld the enforcement notice as corrected for the reasons I have set out in the appeal decision. I attached weight to the evidence submitted by local residents in respect of increased noise and disturbance resulting from the current use. Consequently, I find no unreasonable behaviour in respect of grounds (ii), (v), (vi), (vii) and (viii).
7. I am not fully aware of the dialogue between the appellant and the Council's officers prior to and during the life of the planning application to convert the premises, which was an application for operational development, not a change of use. In any event, lawfulness of a proposed use can only be confirmed by a formal application to the Council for a Lawful Development Certificate (LDC). No LDC was applied for or granted. The appeal before me was limited to the facts and circumstances relevant to the grounds of appeal under Section 174(2) of the Act and I have determined the appeal on that basis. Accordingly, I find no unreasonable behaviour in respect of grounds (iii) and (iv).
8. The Council's reasons for issuing the notice refer to *additional traffic movements with associated noise and disturbance*, but do not say that highway safety was also one of their concerns. This was not clear. Evidence that it was

not clear is also referred to in the appellant's evidence². Highway safety is first raised as an issue in the Council's appeal statement.

9. I acknowledge that the evidence³ prepared and supplied for the appellant by Highways Advice Ltd obliquely supports the appellant's argument that noise and disturbance from generated traffic movements and parking was acceptable in terms of the ground (a) appeal, but it is nonetheless clear to me that it was provided more fundamentally for the purposes of demonstrating acceptable on/off street parking capacity to demonstrate there would be no significant risk to highway safety.
10. At the Hearing, although the Council disagreed with the overall conclusions of the appellant's highway evidence, the detailed evidence itself was not argued to be defective and no alternative quantitative or qualitative evidence of a similar form was advanced by the Council to contradict it. Thus, in terms of highway safety the Council failed to substantiate this (hidden) reason for issuing the notice.
11. I therefore find that in respect of ground (ix) unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to the highways evidence prepared on behalf of the appellant, and representation in respect of the same at the Hearing. Therefore a partial award of costs is justified.

Costs Order

12. 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 Bolton Metropolitan Borough Council shall pay to Mr N Parvez the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to employing a professional highways consultant in respect of preparing the highways evidence and his representation in respect of the same at the Hearing.
13. The applicant is now invited to submit to Bolton Metropolitan 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.

Thomas Shields

INSPECTOR

² Appeal Statement, Emery Planning, paragraph 8.32

³ Highways Appeal Statement evidence at appendix EP1 of Emery Planning appeal statement, and the further survey and evidence at EP1 of the Emery Planning Final Comments