



Costs Decision

Site visit made on 19 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 17th January 2020

Costs application in relation to Appeal Ref: APP/X1545/C/18/3212558 197-199 High Street, Maldon CM9 5BU

- 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 Maldon District Council for a full award of costs against Banyards Taxis Ltd.
 - The appeal was against an enforcement notice alleging:
The unauthorised material change of use of the land to a mixed use comprising a retail unit and a taxi office and depot being a sui generis use under the Town and Country Planning (Use Classes) Order 1987.
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Decision

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

Reasons

2. The government's 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.
3. The appeal on ground (b) was made on the basis that the alleged use had already ceased when the enforcement notice was issued. However, that use had clearly been taking place as acknowledged by the appellant. It cannot therefore be claimed that on the balance of probabilities the use had not occurred as a matter of fact. I consider the appellant behaved unreasonably in bringing this ground of appeal.
4. On ground (c) it was argued that no. 197 High Street had been in long-term retail use and formed no part of a mixed use. However, on the evidence provided by the Council no. 197 had been part and parcel of a *sui generis* use of the entire property as a tool hire depot. The appellant's argument came no higher than that the operations 'included a significant proportion of retail sales' – which effectively concedes there were other elements of use within the same planning unit. I consider the claim that there had been no breach in terms of a material change of use was unreasonable.
5. Regarding ground (a), the appellant argued that a part of the matters alleged to have taken place should be granted planning permission – that is, the taxi radio control office – because the other elements of the operation were moved elsewhere, and the Inspector in the 2018 appeal had raised no concerns in respect of the reception counter and radio operation by one member of staff.

6. However, I note there had been concerns about possible noise from the taxi office causing nuisance for occupants of the flat above. As the appellant says, there is no flat above, but claims that space is used for storage. However, there is little or no evidence of storage use, there has been no application to change the use to storage, and it is not a matter enforced against that might come within the ambit of the deemed planning application. I do not consider the appellant put forward a credible plan on which a judgement could be made as to the effects of the cut-down operation. I consider this amounted to unreasonable behaviour.
7. The ground (f) appeal was made on the basis that planning permission would probably be granted for the proposal for extension and conversion of the building to form 5 flats, an office unit and a retail unit¹, and that this might conflict with the requirements of the enforcement notice if upheld. However, the planning proposal did not include provision of a taxi radio-control office and reception counter, but was for a Class B1 use, which by definition is a use that can be carried on in any residential area without detriment to amenity. The perceived conflict would not therefore arise. This was a specious argument, and I consider it was unreasonable for it to be raised.
8. The ground (g) appeal was again made on the assumption that the planning permission would be forthcoming, and that more time would be needed to carry out that scheme. However, the cessation of the unlawful mixed use would not in any way interfere with implementation of the proposed scheme – in fact it can be assumed that cessation would assist in implementation. This ground held no hope of success.
9. The Council have been put to the expense of preparing their defence to all the five grounds pleaded and I consider this became necessary as a result of unreasonable arguments put forward by the appellant.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Banyards Taxis Ltd shall pay to Maldon District Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Banyards Taxis Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Brown

INSPECTOR

¹ Subject of appeal ref. APP/X1545/W/19/3233747.