



Costs Decision

Site visit made on 2 June 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2020

Costs application in relation to Appeal A: APP/R4408/C/20/3245421 and Appeal B: APP/R4408/C/20/3245422

5 The Brambles, Royston, Barnsley S71 4TA

- 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 Mrs Amylee Shaw and Mr Christopher Shaw for a full award of costs against Barnsley Metropolitan Borough Council.
 - The appeals were against an enforcement notice alleging Without planning permission, the material change of use of the land to a mixed use as residential dwelling house and base for vehicular purchasing, sales and mechanical maintenance of motor vehicles.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ 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. Paragraph 048 of the PPG² advises that for enforcement action, local planning authorities 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.
4. Paragraph 049 of the PPG³ states 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. Examples of this include not reviewing their case promptly following the lodging of an appeal.
5. The appellants' case is that the Council has relied entirely on photographs supplied by neighbouring residents, and it has not made enquiries of its own, including through serving a Planning Contravention Notice (PCN), in order to establish what has been happening at the appeal site. They say that had the matter been investigated more diligently, the Council would have concluded that it would not have been expedient to take enforcement action.

¹ Reference ID: 16-030-20140306

² Reference ID: 16-048-20140306

³ Reference ID: 16-049-20140306

6. From its appeal statement, it appears to me that the Council decided to enforce following “examination of numerous photographic evidence received from the complainants during the investigation.” Section 172(1) of the Act states that the local planning authority may issue an enforcement notice where it appears to them that there has been a breach of planning control. Accordingly the test for service of the notice is that there only has to be an appearance of a breach. The Council does not have to satisfy itself beyond doubt that a breach has occurred. Neither is it a pre-requisite that the Council visits the appeal site in person beforehand, or serves a PCN prior to taking action, in every case.
7. From the appellants’ own evidence, there was a period during late 2019 when it seemed to me that the turnover of vehicles in the appellants’ ownership, and associated with the property, was relatively high. Furthermore, in addition to the photographic evidence provided, the appellant, Mr Shaw, accepts that he has an interest in car maintenance and has occasionally carried out work at the property on vehicles belonging to friends and family.
8. Whilst I have concluded, from the information and evidence before me and on the balance or probability, that the nature and level of vehicle transactions and maintenance taking place does not result in a material change of use of the property in this case, it is nevertheless arguable that such activity, in combination, has been more noticeable than would typically be the case at many other residential properties. This activity has led to concern that the property was being used for business-related purposes.
9. The Council has made certain points in its appeal statement about noise and disturbance resulting from acquisition and maintenance of several vehicles at any one time at the appeal site [my emphasis]; discussions on the site being overheard regarding the potential acquisition of cars and the delivery of motor vehicles on recovery trucks. It is surprising that the Council has not sought to explain how it has concluded that these specific impacts have been occurring as no corroborative evidence, including dates and times when harm was experienced, has been put before me relating to this.
10. However, although I did not agree with the Council’s stance, I do not consider that had it undertaken further investigations and reviewed its case following the receipt of further information from the appellants, this would necessarily have made it more likely than not that a material change of use would not have been found by the Council, and that an appeal would have been avoided.
11. The question of whether a residential use has changed to a mixed use of residential and commercial activity does not result in a universally applied yes or no answer. Instead it requires a fact and degree assessment that depends on the circumstances of each case. I am therefore satisfied that the activity that has been taking place at the property would have provided a reasonable basis for the Council to, at least, initiate enforcement action and subsequently to sustain its case. For this reason I draw a distinction with the case cited by the appellants where it was found that an enforcement notice cannot be issued in relation to a prospective breach⁴.

⁴ R v Rochester City Council v Hobday [1989] 2 PLR 38

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR