



Costs Decision

Inquiry opened on 11 May 2021

Site visit made on 18 May 2021

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Costs application in relation to Appeal Refs: APP/N1920/C/19/3235723 & 3235724

Land adjacent to 8 St Giles Avenue, South Mimms, Hertfordshire, EN6 3PZ

- 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 Mrs Jane Fowler and Mr Andrew John Fowler for a full award of costs against Hertsmeire Borough Council.
 - The inquiry was in connection with appeals against an enforcement notice alleging the material change of use of land from agricultural to Sui Generis (No Use Class) businesses (incorporating commercial, light industrial and open air storage).
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties to a planning appeal are normally expected to bear their own costs, but costs can be awarded where the unreasonable behaviour of a party has caused another party to incur unnecessary or wasted expense.
3. The application was made in writing at the Inquiry. The Council responded orally. The application was made on procedural and substantive grounds. The procedural ground alleges a lack of cooperation on the part of the Council and delay in providing information regarding the failure to produce an aerial photograph upon which they relied. Although referred to as a Google Earth Pro image, the photo in question was actually one of the Council's own collection of images and was available only in hard copy since it appeared not to have been added to its digital coverage. I have no reason to doubt Mr Unuigbe's testimony that he had seen the image, but that due mainly to Covid related difficulties he had not been able to retrieve the image from the Council offices, despite his best endeavours.
4. The second procedural matter relates to the late provision by one of the Council's witnesses of a Google Earth Pro image purported to be a 2009 image but which was in fact an earlier image. It is also alleged in relation to the substantive case that the image was deliberately doctored to appear as a 2009 image. The short answer to this is that the image is publicly available and takes no more than a minute or two to check its veracity. I am unable to say, on the balance of probabilities, whether the image was deliberately manipulated and/or doctored to give a false impression, but I consider that it did not lead to unnecessary or wasted expense on the part of the appellant.

5. On the other substantive points, it is submitted that, the missing 2009 photograph aside, the Council had nothing of substance to substantiate its case and relied upon vague, generalised or inaccurate assertions about the impacts of the uses. In this respect I note that the notice did not require removal of the various structure erected within the site over the years, some of which it probably could have, so that the impact on openness of, for example, garaged chauffeur cars would have been negligible, though there is evidence of chauffeur cars being parked in the open. I presume that is an inadvertent error in the notice, but that was not a focus of the Inquiry. Nonetheless, it is the mixed use and not an individual component that stands to be assessed. In that regard the Council had ample evidence about the sequence of events, not least from the answers to PCNs and the documentary evidence provided by the appellants in related LDC applications. As the appellants themselves noted, aerial photographs themselves are just a snapshot in time and can be misunderstood. I simply do not accept that the Council had no case without a 2009 aerial photograph. Ultimately the appeal turned on matters of planning judgement, including the identification of the planning unit and the materiality of certain uses. The Council's position on these was entirely reasonable in my view, although on some matters I came to a different conclusion on the same facts.
6. I consider in this case that unreasonable behaviour on the part of the Council leading the appellants to incur unnecessary or wasted expense has not been demonstrated, so the conditions for an award of costs have not been met.

Paul Dignan

INSPECTOR