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## Costs Decisions

Site visit made on 1 September 2022

**by P N Jarratt BA DipTP MRTPI**

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

**Decision date: 8 September 2022**

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### **Costs application A in relation to Appeal Ref: APP/P1133/C/22/3299614 Land at Higher Osier Court, Buckland Road, Newton Abbot, Devon, TQ12 4SA**

- 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 CamperWorx Ltd for a full award of costs against Teignbridge District Council
  - The appeal was against an enforcement notice alleging the unauthorised change of use of the land and building from B8 (storage and distribution) to B2 (general industrial) consisting of a campervan conversion business.
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### **Costs application B in relation to Appeal Ref: APP/P1133/W/22/3291878 Higher Osier Court, Buckland Road, Newton Abbot, Devon, TQ12 4SA**

- 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 CamperWorx Ltd for a full award of costs against the decision of Teignbridge District Council.
  - The appeal was against a refusal of planning permission for the change of use from B8 storage and distribution to B2 general industrial..
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## Decisions

**Costs application A:** The application for an award of costs is refused.

**Costs application B:** The application for an award of costs is refused

## Reasons

1. The 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.
2. In application A, the appellant considers that the Council has acted unreasonably on a number of grounds, including unsubstantiated evidence from Environmental Health audio recordings; the use is permitted development; the use should have been approved subject to conditions; the Council acted prematurely, the steps in the notice are excessive and the compliance period was unreasonable.
3. In application B, the applicant refers to paragraph 16-049-20140306 of the Guidance on appeals and, in particular, refusing permission on a ground

capable of being dealt with by condition; preventing development that should have been permitted; and, by not reviewing the case following appeal.

4. In determining the planning application, the Council had the benefit of advice of their Environmental Health Officer, who indicated that the development would be acceptable subject to conditions to mitigate the noise. Officers sought amended plans to enclose the building on the site and the appellant submitted revised plans. However, these were not formally accepted by the Council as the applicant's agent did not respond to the Council's question relating to an amended red line on the site location plan (which the Council considered would change the use of the whole site to B2, and not just the buildings due to changes in the site boundary). The application was therefore determined on the basis of the original and not the revised plans as no consultation of interested parties had taken place, due to the agent's lack of response.
5. Planning Practice Guidance makes it clear that development should not be refused on a ground that can be dealt with by condition. Whilst it seems that the Council could have permitted the application subject to conditions and thereby avoided the appeal against refusal and the taking of enforcement action, they did not do so because of the lack of response from the agent. Under these circumstances, the Council action was not unreasonable.
6. The Council accepts that it issued the enforcement notice without being substantiated by the Council's Environmental Health's own audio recordings as they had already refused the planning applications for the campervan conversion business due to concerns being raised about noise. Whilst the Council is entitled to reach a view on the evidence available, it seems to me that there has been little assessment of the disturbance that the lawful use creates with that caused by the camper conversion business. Whether this could have been demonstrated with the help of existing recordings is not clear. Whilst the Council has acted on the legitimate concerns of the residents, there is no indication that the Council actively sought an independent acoustic assessment from the appellants. Whilst the Council could have requested this, the appellants could also have voluntarily submitted such an assessment as part of their application. Although the Council could have been more pro-active in establishing the extent of noise disturbance, this does not amount to unreasonable behaviour.
7. It was not unreasonable for the Council to take enforcement action before the determination of the s78 appeal. Indeed, the Council held back from taking action pending the determination of the second planning application. As the concerns over the development had been ongoing since June 2020 and two applications had been refused, complaints were continuing to be received and it was considered expedient to take enforcement action.
8. The appellant's claim that the Council's actions have prevented or delayed development is spurious as both the applications were retrospective and enforcement action was taken following complaints about the activities of the business. This does not represent unreasonable behaviour.
9. The Council states that it reviewed their case when the application leading to Appeal B was made and submitted a list of conditions to the Planning Inspectorate, in the event of the appeal being allowed. Again, this does not amount to unreasonable behaviour.

10. The Council is perfectly entitled to disagree with an appellant's case in respect of whether the development constitutes permitted development, based on the facts and circumstances of the matter. The appellant should have been well aware of this based on the appeal cases he submitted. The Council has not shown unreasonable behaviour on this point but satisfactorily demonstrated why they concluded as they did.
11. The appellant appealed against grounds (f) and (g) in the enforcement notice claiming that the steps required are excessive and the compliance period was too short, thereby precipitating the appeal. However, these are matters better addressed in decisions on the appeals, albeit that they did not need to be determined in view of success of the ground (a) appeal. No unreasonable behaviour on the part of the Council has occurred in setting out the steps and compliance period.

### **Conclusions**

12. I therefore find that in Costs Application A unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.
13. I also find that in Costs Application B unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Peter Jarratt*

Inspector