
Costs Decision

Inquiry held on 26-27 April and 6-8 and 12 December 2022

Site visit made on 6 December 2022

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 06 January 2023

Costs application in relation to Appeal Ref: APP/Q3630/C/18/3196414

262-264 Chertsey Lane, Staines-upon-Thames

- 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 Mr N Payne for a full award of costs against Runnymede Borough Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the land from agricultural use to storage use including but not limited to unit load devices, vehicles associated with the storage use, pallets, storage containers, metal sheeting and galley carts.
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Decision

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

The submissions for Mr N Payne

2. The submissions by Mr N Payne and his comments on the response to the application by the Council were made in writing (Inquiry Documents (ID) 20 and 22).

The response by Runnymede Borough Council

3. The Council's response to the application was made in writing (ID 21).

Reasons

4. The National Planning Practice Guidance (NPPG) 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.
5. In the Officer's Report on 'Proposed Enforcement Action' dated 15 January 2018 the split decision on the LDC application is mentioned under 'Planning and Enforcement History'. But it is not referred to under 'Planning and Enforcement Considerations' and there is no mention of the lawful storage use of land to the west of the dog-leg fence. There is reference to "...the land is surrounded by residential properties..." and to "The unauthorised storage is located close to residential properties in Chertsey Lane, Norlands Lane and Holland Gardens". The land that is the subject of the enforcement notice is not surrounded by residential properties and between the land and residential properties on Chertsey Lane is the area of lawful storage use.
6. It is likely that the 'land' referred to in the Officer Report is the land to the west of the dog-leg fence, even though the plan attached to the report excludes that part of the land adjoining that fence. It is likely therefore that the report considered all

storage to the west of the dog-leg fence that "...is taking place across the land at the southern end of the site close to residential properties", rather than storage to the west of that which was deemed lawful in December 2017. If the report had considered the fact that the storage use of land attacked by the notice was an extension of lawful storage then it would have had to grapple with *Burdle* issues and whether there had been an intensification in the use of land within a planning unit.

7. The NPPG states 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". The split decision on the LDC application was issued less than five weeks before the date of the Officer's Report. It is referred to in the Report but its consequences were clearly not taken into account.

8. On the date of issue of the enforcement notice land adjacent to, and to the west of, the dog-leg fence was in use for storage that had been deemed to be lawful by the grant of the LDC in December 2017. This is why that part of the land to the west of the dog-leg fence was excluded from the land that is the subject of the enforcement notice. But the materiality of a change of use of land, as alleged in the notice, must be assessed against the use of land within a planning unit, even if the enforced land is only part of that planning unit.

9. In this case the storage use alleged by the Council in the enforcement notice is an extension of the adjoining storage use that was deemed to be lawful (the revocation of the LDC does not affect this). Both areas of storage are within a single planning unit irrespective of whether the planning unit falls within the first, second or third *Burdle* category. The Council's written evidence on the ground (b) appeal, having set out a chronology of events before and after the date of issue of the enforcement notice, simply states that "...there is no reasonable basis to conclude the matters in the enforcement notice...have not occurred".

10. There is no mention of the *Burdle* case, no assessment of what is the relevant planning unit, and no assessment of the materiality of the alleged change of use. On the last matter, given that the alleged use is the same as the use of adjoining land within the same planning unit, there is no assessment of whether the alleged use is a material change of use because the established use has intensified to such a degree that there had been a definable change to the character of the use. The subject of intensification is referred to in the Council's closing statement but this is not evidence and simply sought to rebut the Appellant's case that there had been no intensification of storage within the planning unit.

11. The Council's investigations prior to issue of the enforcement notice failed to take into account a significant factor, the very recent issue of the LDC which established the lawfulness of storage to the west of the dog-leg fence. The consequences of the issue of the LDC affected consideration of the storage use that the notice sought to attack. These consequences would have required all the assessments mentioned in the previous paragraph. Had they been taken into account enforcement action could have been avoided.

12. The Council acted unreasonably, prior to issue of the enforcement notice, in not taking into account a significant material consideration that could have prevented enforcement action being taken. They have also failed to substantiate their case both in written and aural evidence to the Inquiry. In these circumstances the application for costs must succeed and a full award of costs is justified.

Costs Order

13. 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 Runnymede Borough Council shall pay to Mr N Payne, 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.

14. Mr N Payne is now invited to submit to Runnymede 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.

John Braithwaite

Inspector