
Costs Decision

Site visit made on 10 January 2023

by R J Perrins MA

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

Decision date: 13 February 2023

Costs application in relation to Appeal Ref: APP/X0415/C/18/3201804 Land to rear of Bubbles Car Wash, London Road, Little Kingshill, Buckinghamshire HP16 0DH

- 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 Mr A Ahmed for a partial award of costs against Buckinghamshire Council.
 - The appeal was against an enforcement notice alleging the material change of use of the Land to a sui generis mixed use for the stationing and storage of motor vehicles and motor vehicle parts, the preparation of motor vehicles for sale, the stationing and storage of a skip and of nine metal storage containers.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for to incur unnecessary or wasted expense in the appeal process.
3. The application was made for a partial award of costs in respect of the withdrawn appeals under grounds (b), (c) and (d). The appellant considers that had the Council acted reasonably and promptly in producing evidence known only to them, then those appeals would never have been made because they could never have been won. Detailed submissions in writing were made to that effect.
4. The Council also responded, in some detail, in writing and set out that providing copies of the previous enforcement notices served at the site, prior to the submission of the most recent proof of evidence, was simply overlooked. However, the onus also falls with the appellant and had a land search been carried out the appellant would have been aware of the existence of the enforcement notice served in 1976.
5. The Guidance sets out the kinds of unreasonable behaviour by a Council which would lead to an award of costs against it and that includes introducing fresh and substantial evidence at a late stage. Further, where an appeal could have been avoided altogether by more diligent investigation.

6. There is no dispute that the Council did introduce fresh and substantial evidence, at a very late stage indeed. That is to say four weeks before the appeal was due to be heard following an enforcement process dating back some years. That fresh evidence, an enforcement notice dating back to 1976, was something the appellant was unaware of. It is clear that had the appellant known of its existence the appeal would have been completely different. A number of grounds would not have been considered and no costs would have been incurred in respect of them.
7. On its face, it would seem the production of the enforcement notice, late in the day, would amount to unreasonable behaviour which led to unnecessary expense. I say that in the face of an extensive site history, the serving of a Planning Contravention Notice in 2014 alleging a material change of use, and the subsequent enforcement notice. Throughout that time, it would be reasonable, as the appellant sets out, to expect the Council to have an up-to-date record of the site including previous site history and enforcement action.
8. I accept that it is not unreasonable to expect the Council to have known that it had already served a notice on the land, on a previous owner, prohibiting the use of the land for storage unconnected with agriculture. Had that been so, it is likely the Council would have had no need to serve a fresh enforcement notice embracing a further change of use. The Council could have relied upon the previous notice. Because that did not happen, the appellant and his professional advisors were unaware of the existence of the 1976 notice. It had not been referred to previously in any of the written evidence nor was it on the Council's webpage. In that light the appellant put forward a case that could never have been won.
9. I have some sympathy for the appellant and accept that the Council should take all reasonable steps and adequate prior investigation before taking enforcement action. In addition, there is some merit in the argument that as the notice had not been referred to prior to the final proof, it was reasonable to believe nothing else existed. That being compounded by the Council's online records being poor in this instance.
10. Bringing the appellant's case together it is clear to me that the Council erred in serving an enforcement notice in the face of an existing notice for the use that the appellant was arguing as lawful. That was a failure on behalf of the Council and to suggest that records are basic and the description of the land has changed over time, with different names and addresses, does little to build confidence in the Council's systems and procedures. An error was made, it was not a matter of simply overlooking, more diligent investigation would have, as is evidenced by the Council's final proof, led to the enforcement notice being disclosed early on in the procedure.
11. That error changed the appellant's case considerably, regardless of any arguments concerning the serving of the more recent notice and the *sui generis* use to which it refers. On these facts alone a costs award would be appropriate. Whilst I accept that the Council is able to serve a new notice in the face of an old one it seems unlikely that the Council would have taken that approach had more diligent investigation been carried out.
12. However, there is also no dispute that had a land charges search been carried out the enforcement notice would have been brought to light and the appellant

may not have used the land as we see today. To that end it is not a legal requirement to carry out a land search when one buys a piece of land and in this case the appellant chose not to instruct a solicitor when he bought the land in 2012. That was, as set out in the costs submissions, a risk the appellant took. That risk being the appellant may not have been able to use the site as intended.

13. In my view, given the operations and use of that land that we see today, not undertaking a land search at the time of purchase was an oversight by the appellant. It seems to me that when purchasing land, with a view to running a business, any reasonable person would conclude that a land search would be a necessity to ensure that use and business was safe from falling foul of planning legislation. It seems to me choosing not to, at that point, does not get the landowner a free pass when it comes to unnecessarily making 'doomed appeals' some six years later.
14. What is clear is that the appellant put themselves at risk when purchasing the land. That oversight cannot be laid at the Council's door. Furthermore, the appellant has been professionally represented and there is a planning enforcement history that goes back many years. It is not clear to me how much of that history was interrogated by the appellant or his agent prior to making the appeal, and the burden of proof for legal grounds of appeal falls to the appellant. Overall, therefore I am not convinced that the appellant took all reasonable steps to ensure the facts of his case before proceeding with the appeal.
15. Bringing all of these threads together, the Council were at fault for not producing the 1976 enforcement notice much earlier in the process, but the appellant took a risk in pursuing his business interests on the land without carrying out a search on it. Whilst their investigations were poor it is not for Councils to make cases for landowners who also have a responsibility as custodians of land. To my mind, it is reasonable to expect that ownership to include a knowledge of the property history particularly when purchasing it to run a business on, and in the face of, a previous enforcement history.
16. Thus, both parties must bear some responsibility for the appeals being withdrawn, and wasted costs being incurred. Those costs could have been avoided by both parties had they both been more diligent in their initial investigations.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

RJ Perrins

Inspector