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## Costs Decision

Site visit made on 5 March 2024

**by J Moss BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 May 2024**

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**Costs application in relation to Appeal A Ref: APP/D3640/C/22/3301643**

**Appeal B Ref: APP/D3640/C/22/3301644**

**Land at Chobham Car Spares, Clearmount, Chobham, Woking GU24 8TP**

- 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 Derek Willis and Mr John Ripley of Ripley & Willis, Chobham Car Spares for a full award of costs against Surrey Heath Borough Council.
  - The appeal was against an enforcement notice alleging the material change of use of land to a use for the storage and distribution of scaffolding materials, including the unauthorised erection of metal sheet storage buildings; commercial used car storage and sales business; and storage of heavy industrial plant and machinery.
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### Decision

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

### Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The applicants refer to the withdrawal of a previous enforcement notice and the issue of the notice subject of the appeals before me. They appear to suggest that the Council has behaved unreasonably in failing to notify all those served with the previous enforcement notice of its withdrawal. They also point to the period between the date of the enforcement notice before me (i.e. the date of its issue) and the applicants receipt of it.
4. The previous enforcement notice and the notice before me are two separate matters. The matter of the previous notice is not before me. Accordingly, I am unable to consider whether or not the Council behaved unreasonably in its withdrawal of that notice.
5. As for the notice before me, it is not unusual for there to be a period of time between the issue (i.e. date) of an enforcement notice and its service, as there has been in this case. The issue of an enforcement notice is not the same as its service; they do not need to occur on the same date. What is important is that the recipient of a notice has sufficient time to make an appeal, once they have been served with a notice. I have already concluded that there was sufficient time for the appeal to be made in this case. Accordingly, I cannot

conclude that the Council has behaved unreasonably in serving a notice that might have been issued a number of days before.

6. On a separate matter, the applicants suggest that the enforcement notice should not have been issued, having regard to the evidence of the use of the site the Council would have had before them. The matters relevant to the consideration of these appeals are complex and I agree that there is extensive history relating to the use of the site. There appears to have been no dispute between the parties that there has been a change to how the site has been used in recent years. An assessment of the relevant history is, therefore, necessary in determining whether or not this change in use is development that requires the benefit of planning permission, whether that assessment be via an application for a lawful development certificate or via an appeal against an enforcement notice. The time taken to research and prepare evidence to support the applicants' position in this case has not, therefore, been unnecessary.
7. I note the applicants' claim that, having reviewed that evidence, the Council should not have issued the notice. However, my decision with regard to the lawfulness of the use of Area A and Area B (parts of the site referred to in the enforcement notice) was a matter of planning judgement. The Council prepared a robust case in response to the grounds of appeal relating to these parts of the wider site and in response to the linked certificate of lawful development appeal<sup>1</sup>. Whilst I did not agree with the Council's judgment on the matter of the lawfulness of the use of these parts of the wider site, I cannot conclude that their decision to issue the enforcement notice in respect of these areas was unreasonable.
8. Whilst the Council may have encouraged the applicants to submit a planning application in respect of Area B, as suggested, this does not alter my conclusion above. Indeed, it is good practice for councils to advise parties on the most appropriate course of action, in the event that a suspected breach of planning control is detected on land the party has an interest in.
9. As for Area C, I acknowledge that I have found in the applicants' favour, in part, under the ground (c) appeals. However, in view of my conclusion on the ground (c) appeals, I did not move on to consider the ground (d) appeals, which would have included an assessment of the historical evidence relating to the use of the eastern part of the appeal site. In view of this, I cannot conclude on whether or not the Council has behaved unreasonably in this regard.
10. Notwithstanding this, there was no dispute that a breach of planning control had occurred with regard to the use of at least some of Area C. The Council's accuracy with its annotation of the enforcement notice plan is unfortunate and I have not been able to correct the notice. Nevertheless, there was in my judgement a good reason for the Council to issue the notice in respect of Area C. All things considered, I cannot find the Council to have behaved unreasonably in issuing an enforcement notice relating to the use of the easternmost part of the site.

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<sup>1</sup> Appeal reference APP/D3640/X/21/3271883 (Appeal C).

11. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Accordingly, an award for costs is not justified.

*J Moss*

INSPECTOR