



Costs Decision

Inquiry held on 4 and 10 June 2024

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2024

Costs application in relation to Appeal Refs: APP/E0345/C/24/3338517 & APP/E0345/C/24/3338518 and APP/E0345/C/24/3338521 & APP/E0345/C/24/3338522

Land at Norcot Road, Tilehurst, Reading RG30 6BU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Reading Borough Council for a full award of costs against Olivia & Ambra Property Development Ltd and Elantina Klosi.
 - The appeal was against the Council's decision to issue enforcement notices against considered material changes in the use of the land.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG indicates that an appellant could be at risk of an award of costs if it fails to produce the necessary evidence to support the grounds of appeal made.
3. The application is for both a substantive and a procedural award of costs due, respectively, to the appellant's failure to produce evidence to substantiate immunity from planning enforcement action and a considered failure to co-operate with the Council's investigation.
4. Firstly, I have to agree with the Council that there was no evidence to demonstrate that the vehicle washing and valeting operation was immune from enforcement action, along with the various operational development targeted in both enforcement notices. In fact, both appeals were hopeless as the appellants' witnesses confirmed as such by way of their evidence. However, the Inquiry put into spotlight the notices themselves rather than the actual breaches and their remedial requirements.
5. Whilst I am grateful to the Council's for setting out its case in a clear and structured form – more so than the appellants written evidence which was rather haphazard – I feel that the Council's case was hampered by the allegations, identically worded in both enforcement notices, which is borne out of a misrepresentation of the historical, commercial use of the land. From the collective evidence of the appellants' witnesses, supplemented by old photographs, it was clear that the former vehicle sales business was

independent of, and separate to, the vehicle repair businesses operating in and around the garage buildings beyond.

6. The Council's description of the previous use – '*vehicle sales and associated garage workshop*' is therefore incorrect. In fact, as I have indicated in my appeal decision letter, it is apparent to me that vehicle repairs and ancillary activities such as vehicle storage outside the two garage buildings was the primary use of the land, with the vehicle sales business operating as an unrelated secondary use, but within one planning unit. This is consistent with the *Burdle* judgement which identified a distinct category of a single planning unit that is in mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another.
7. In this connection it was satisfactorily demonstrated that the vehicle repair uses, due to the site's planning history, had acquired immunity from enforcement action and was the lawful, primary use of the land.
8. Given these circumstances I do not feel it is justified to criticise the appellants for a considered lack of co-operation. As it transpired, misconstruing the land's planning history and its use rights, which to me were apparent from the evidence, meant that the enforcement notice, the subject of Appeal B, in requiring for the cessation of the use of the land for vehicle bodywork repair and maintenance, made no savings for this and, what I have found to be a single planning unit, had been carved up by way of the plan attached to each notice.
9. It seemed obvious to me that the appellant's representatives came to the Inquiry, less concerned about the enforcement notices' requirements than furthering the claim that the land in its entirety enjoyed Class B2 use rights. I found this not to be the case, but when I asked the appellants' planning witness why the Council's recent decision not to issue a s191 lawful development certificate (LDC) had not been appealed – the application had red-ringed the whole planning unit, but it would have been open to the Council to issue a LDC for the land outside the confines of the vehicle washing and valeting operation – he responded that the enforcement notices were quickly issued after the refusal and he had concentrated instead on appealing the notices.
10. In the circumstances I consider the case an unusual one and, although I dismissed the appeals and upheld the enforcement notices, with a number of corrections, the fact I needed to get the notices on a proper footing likely explains why the appellants seemingly misunderstood the process and effectively lodged appeals that had no chance of succeeding under ground (d).
11. I therefore refuse the application.

Timothy C King

INSPECTOR