



Costs Decision

Site visit made on 3 June 2025

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th June 2025

Costs application in relation to Appeals: APP/B3030/C/24/3346396 and APP/B3030/W/24/3343103

Downside Workshop and Store, Great North Road, Bathley, NEWARK, NG23 6HP

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Sherwood Storage Ltd for a full award of costs against Newark & Sherwood District Council.
 - Appeal APP/B3030/C/24/3346396 was against an enforcement notice alleging a material change of use of the site to storage use. Appeal APP/B3030/W/24/3343103 was against the refusal of planning permission for Change of classification from Sui Generis to B8 to allow the operation of a [Sic] storage business.
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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 (PPG) 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 applicant contends that the Council incorrectly made its assessment of both the planning application and determination to pursue enforcement action based on an incorrect interpretation of a planning permission previously granted on the site. It is the applicant's view that the site consists of land with the benefit of a previous lawful *sui generis* use as a taxi business. The applicant claims that the Council accepted that position since an initial enforcement notice was withdrawn, and a second notice (the appeal Notice) was subsequently served.
4. In enforcement appeals, a ground (c) appeal requires a decision maker to make a legal conclusion based on the evidence before them. It is an appellant's burden in an enforcement appeal to demonstrate their claim under ground (c). The test of the evidence is the balance of probability.
5. In this case, there was no dispute that a contradiction existed between detailed plans and a location plan referred to in Condition 06 of planning permission ref 11/01713/FUL for a 'change of use of land and erection of building to be used in conjunction with private hire taxi business'. In applying established caselaw, interpretation of a planning permission should be made on a pragmatic basis and, if necessary, rely on supporting documentation if it helps clarify matters beyond the four corners of the permission.
6. As I have found, during the consideration of the 2011 application, the Council legitimately sought to limit the extent of the site. Although the plan subsequently submitted excluded land where the operational development was proposed, the

- extent of the permission can be reasonably interpreted from the officer's report in conjunction with the referenced plans and a subsequent landscaping plan. Moreover, even if the original 'red edge' was relied upon, contrary to the applicant's assertion, it only covers a limited area of the enforcement site.
7. Notwithstanding that the expediency of pursuing enforcement is a matter beyond the s178 appeal, if the Council subsequently misinterpreted the extent of benefit of the planning permission to include more of the site, then that would favour the applicant in both appeals. However, by implication, it would not have changed their decision in the substantive matters in either appeal or their view that a material change of use had occurred.
 8. Consistent with my own finding, the Council's reference to agricultural land as part of the previous use of the appeal site was probably correct. Furthermore, as a *sui generis* use could include the single mixed use of a planning unit – here probably a taxi business, agricultural land and landscaped areas, reference by that description is also not inherently unreasonable.
 9. In the absence of substantive evidence to demonstrate any established lawful use of the whole of the site, or a ground (d) appeal, there is little basis to conclude that the Council's own interpretation and starting point for assessment against the policies of the development plan was unreasonable or has resulted in wasted expense being incurred. As comparison of the visual effects of the previously assessed taxi use and the materially larger appeal site are not directly comparable, it was open to the Council to reasonably depart from its finding in the 2011 permission. A potentially erroneous conclusion on a later application for the residential use of some of the land is unhelpful, but not unreasonable.
 10. The Council's reasoning and position on the determination of the containers as operational development is explained. As a matter of planning judgement based on site circumstances, I do not find that, or the subsequent requirement to apply a sequential flood risk test, unreasonable or contrary to established caselaw.
 11. The Council's concerns in relation to highway safety were set out based on the limited evidence initially provided by the applicant. Although the applicant highlighted detail of the storage use taking place, any grant of planning permission should consider the potential wider implications for similar uses within the B8 use class. It was not therefore unreasonable to conclude that the policy test may not be met by the development proposed. The subsequent timely withdrawal of defence of their highway reason for refusal of planning permission and for serving the Notice followed additional evidence provided by the applicant. This was not unreasonable.
 12. The applicant has confirmed that reference to incorrect service of the enforcement notice and alleged failure of due diligence relates to the first (withdrawn) Notice. It is not relevant to this claim.
 13. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

R Hitchcock INSPECTOR