Costs Decision

Site visit made on 17 October 2018

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 07 November 2018

Costs application relating to Appeal Ref: APP/Z5060/C/18/3193963

Land and premises at the former Bull Inn, Rainham Road, South
Dagenham, Essex RM10 8AQ

- The application is made by Serv Group London Ltd, trading as Tyre Serv, under the
  Town and Country Planning Act 1990, sections 174 and 322 and Schedule 6, and the
  Local Government Act 1972, section 250(5), for a full award of costs against the Council
  of the London Borough of Barking and Dagenham.
- The appeal was against an enforcement notice alleging “the unauthorised erection of
  containers being used for commercial purposes (A1 use)”.

Costs decision

1. The application is refused.

Reasons for the costs decision

2. The Government’s Planning Practice Guidance (“the Guidance”) indicates that
the parties to an appeal are expected to behave reasonably to support an
efficient and timely process and that where a party has behaved unreasonably,
and this has directly caused another party to incur unnecessary or wasted
expense in the appeal process, they may be subject to an award of costs.

3. The applicants claim, firstly, that the Council’s actions, taken as a whole, were
proportionate and, secondly, that the Council failed to substantiate the
reasons for issuing the enforcement notice or to support those reasons by
objective analysis. As a result, the applicants state that they have incurred
unnecessary expense.

4. The first of these claims seeks consideration as a whole of the Council’s actions
in serving a temporary stop notice, followed by the enforcement notice and a
permanent stop notice. This costs application, however, can only relate to the
enforcement notice and the appeal against it. The second of the claims relates
to the Council’s choosing not to produce a substantive appeal statement and to
rely on the reasons they gave in the enforcement notice for its issue.

5. The National Planning Policy Framework in force at the time the enforcement
notice was issued stated: “207. Effective enforcement is important as a means
of maintaining public confidence in the planning system. Enforcement action is
discretionary, and local planning authorities should act proportionately in
responding to suspected breaches of planning control”.

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6. The Guidance indicates that Councils are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples in an enforcement appeal could include a failure to show that the issue of the enforcement notice was reasonable or the making of assertions about the impact of the development enforced against that could not be supported on an objective analysis.

7. I described in the appeal decision how the containers caused serious harm to the appearance and amenity of the site and its surroundings and how their presence conflicted with planning policies. This was clearly a case where effective enforcement action was needed and the issue of an enforcement notice requiring the containers to be removed was without doubt a proportionate response. It would have been helpful if during the appeal process the Council had added to the reasons given for the issue of the enforcement notice but they did not act unreasonably, in this instance, by failing to do so, since the reasons were sufficient on their own to withstand objective analysis and the applicants were able to conduct their appeal thoroughly without further material from the Council.

8. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. An award of costs is not justified. The application has therefore been refused.

D.A. Hainsworth

INSPECTOR