Case Name: *Johnson & Anor v Royal Borough of Windsor And Maidenhead* [2019] EWHC 160 (Admin) (01 February 2019)

Full case: Click Here

Commentary: This case concerned two claims relating to enforcement proceedings against the change of use of the land to a commercial stud farm and livery. The first claim was an application for judicial review by the land owners against the service of an enforcement notice and breach of condition notices. This application was dismissed. The second claim was a statutory appeal by the Council against the Secretary of State's decision on costs relating to a previous enforcement notice that had been withdrawn. Permission was granted for the appeal but the appeal was dismissed.

The basis of the judicial review against the service of the enforcement notice and breach of condition notices was that the intensification of the use as "DIY livery" to use to commercial livery was not a material change of use in breach of condition of a 1991 planning permission. The Court held that the alleged breach of planning control gave rise to a classic question of matter of fact and degree and there was nothing unreasonable about the Council's conduct at this stage of proceedings. The evidence would be considered by an Inspector in the appeal against the Enforcement notice and could be considered as part of any defence to prosecution in relation to the breach of condition notices.

The Claimants also sought to argue that the 1991 permission was limited to the specific development permitted and the conditions did not apply outside those areas. Applying the principles in R v Ashford Borough Council ex parte Shepway Distinction Council [1999] PLCR 12 it was clear that the scope of the planning permission and the conditions was not limited in this way.

The Council's statutory appeal against the Secretary of State's cost decision related to the full award of costs to the appellant following the withdrawal of a previous enforcement notice shortly after the inquiry into the notice opened. The withdrawal followed an unsuccessful application for an adjournment on the basis of a very late change in circumstances including additional evidence submitted by the appellant the day before the inquiry.

The decision of the Costs Inspector was challenged by the Council. The first ground, that the Inspector had made an error of fact in relation to events concerning the application for an adjournment at the inquiry, was dismissed because the Court held that there was no "established mistake" in this case. The second ground was that the Cost Inspector had applied the wrong test (that the Council did not have sufficient reasons rather than good reason to withdraw the notice). The Court was not persuaded that the wrong test had been applied. The Court was also not persuaded that it was irrational for Costs Inspector to conclude that the submission of late evidence was unreasonable yet deny the Council's costs. The guidance was clear that 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 Council would have had to

prepare for the inquiry in any event so the second limb was not satisfied. The need to conduct a criminal investigation due to contradictions between the late evidence and the appellant's previous responses to Planning Contravention Notices was not a relevant consideration and the Costs Inspector had not been required to take it into account. The appeal was dismissed.

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