The Planning Inspectorate

Appeal Decisions

Site visit made on 13 December 2013

by Martin Joyce DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 January 2014

Appeals A & B: APP/N1350/C/12/2169474 & 2169435
Land at Steel Store, St Nicholas Industrial Estate, Dodsworth Street, Darlington DL1 2NJ

- The appeals (A and B respectively) are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Albert Hill Skip Hire Limited (Appeal A) and Mr Anthony Shepherd (Appeal B) against an enforcement notice issued by the Darlington Borough Council.
- The Council's reference is E/11/04.
- The notice was issued on 23 December 2011.
- The breach of planning control as alleged in the notice is, without planning permission, changing the use of the land from a B2 general industrial use (consisting of a wood processing facility) to that of the *sui generis* mixed use of waste transfer, waste tipping and skip hire.
- The requirements of the notice are to:
  (a) Cease importing waste (including inert waste) to the land;
  (b) Remove all waste material stored on the land;
  (c) Not to use or permit the use of the land (including any building on the land) as a waste transfer station;
  (d) Not to permit the use of the land as a tip; and,
  (e) Not to permit the use of the land (including any building on the land) for skip hire or storage.
- The periods for compliance with the requirements are three days in respect of steps (a) and (d) and three months in respect of steps (b), (c) and (e)
- The appeals are proceeding on the grounds set out in Section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended. As the prescribed fees have not been paid within the specified period, the applications for planning permission deemed to have been made under Section 177(5) of the Act as amended do not fall to be considered.

Summary of Decision: The appeals are dismissed and the enforcement notice, as corrected, is upheld.

Application for costs

1. An application for costs was made by the Council against the appellants. This application is the subject of a separate Decision.

Procedural Matters

2. These appeals were initially set to be determined by the Public Inquiry procedure and I opened an Inquiry on 6 November 2012. That Inquiry was adjourned until 15 January 2013 due to the unavailability of a key witness for the appellants (Mr Anthony Shepherd). On the resumption of the Inquiry,

however, Mr Shepherd was still unavailable, and deadlines set for the production of various items of documentation had not been met. Moreover, no agent had been appointed to ensure adequate representation. A further request for an adjournment of the Inquiry was therefore refused.

3. A suggestion that the appeals proceed by the written representations procedure was then canvassed and agreed by both parties. However, before a site inspection could take place, Mr Shepherd withdrew the agreement made on his behalf, on the basis that he was entitled to an oral hearing where evidence could be tested under oath, having regard to Article 6 of the Human Rights Act 1998.

4. Subsequently, attempts were made to agree a date for the resumption of the Public Inquiry but, for various reasons, this proved impossible. Therefore, it was determined, on 16 August 2013, that the appeals should be decided by the written representations procedure. The normal deadlines were set for the production of statements and final comments and a statement was received from the Council. No further submissions were, however, made by or on behalf of the appellants. I shall, nevertheless, take account of the initial grounds of appeal, and all subsequent comment and submissions made by them during the course of the above proceedings. I shall also consider the documentation supplied by the Council for the adjourned Public Inquiries, as copies were sent to the appellants at that time.

Matters Concerning the Notice

5. There are two matters concerning the wording of the notice that require consideration with a view to determining whether the notice can be corrected without causing injustice or prejudice, having regard to the provisions of Section 176(1) of the Town and Country Planning Act 1990 (the Act). These matters were raised by me at the start of the Inquiry on 6 November 2012, and a response was made by the Council. The appellants' representative was not, however, able to comment.

6. Firstly, the notice does not, as a matter of fact, state the period within which the alleged breach of planning control has taken place. Having regard to the provisions of Section 171B of the Act, the relevant period for an alleged material change of use is ten years. This period is alluded to in Section 4(viii) of the Notice, and it does not seem to me that the appellants have been misled by such omission. Moreover, having regard to Section 173 of the Act, failure to specifically mention the period within which the breach is alleged to have taken place would not invalidate the notice. However, it is normal to start the section giving the Council's reasons for issuing the notice with appropriate wording as shown in Appendix 2 to Annex 2 of Circular 10/97, and it seems to me that the notice should be amended in this way.

7. Secondly, there is an inconsistency between the wording of the allegation in the Notice, and the wording of the requirements. The notice alleges a material change of use to a mixed use of waste transfer, waste tipping and skip hire, but the requirements refer variously to the importation of waste (Step (a)), the storage of waste material (Step (b)), the use of the land as a waste transfer station (Step (c)), and "storage" (Step (e)). Moreover, the wording of the majority of the requirements is framed rather awkwardly, through a requirement of "not to use or permit the use of...". I suggested that a more consistent requirement would be to cease the use of the land for the purposes

of a mixed use of waste transfer, waste tipping and skip hire, and to remove all skips and waste material brought onto the land in connection with this mixed use.

8. The Council accepted that the wording of the notice was faulty in these respects, but submitted that appropriate corrections could be made. They suggested that the period within which the alleged breach of planning control has taken place could be inserted at the start of Section 4 of the notice, and that the requirements could be simplified and condensed into two steps; the cessation of the unauthorised use, and the removal of the waste material and the skips. The time periods for the completion of these requirements should then be three days and three months respectively.

9. I consider that the amendments suggested by the Council would overcome my concerns about the notice and the inconsistencies in its wording. I do not consider that such alteration would cause any injustice or prejudice for the appellants. I shall therefore use the powers of correction available to me accordingly.

Background and Planning History

10. The appeals concern land in the northern part of St Nicholas Industrial Estate. The site is roughly rectangular in shape and contained, at the date of the notice, a large industrial building measuring about 19m in width and 65m in length. Vehicular and pedestrian access to the site is gained from the south along a lengthy concrete drive leading from a private roadway off Dodsworth Street. The access, which was the subject of a planning permission granted in 2007, was not included in the land shown on the enforcement notice.

11. The Council accept that, historically, the site had a general industrial use falling within Class B2[1] of the Use Classes Order (UCO). In October 1995, permission was refused for a proposed change of use from that use to use for the storage and distribution of tyres (B8) and reclamation/recycling of used tyres (B2)[2]. From about 2004 or 2005, the site was used as a wood recycling unit; a use which the Council accepted as falling within Class B2. A further planning application was made in 2007 for the change of use of the wood recycling unit to a waste transfer station, and planning permission was granted on 21 September 2007[3]. Subsequent investigation into alleged breaches of conditions attached to that permission revealed that it had lapsed without lawful implementation. Prosecution of the alleged breaches was discontinued in November 2011, and an enforcement notice relating to those alleged breaches was then withdrawn.

12. It is also relevant, in the context of the history of the site to note that an appeal by the appellant company against a Notice of Revocation and Requirement to Take Steps, issued by the Environment Agency on 9 February 2012, was dismissed on 20 August 2012[4].

13. I saw, at a pre-Inquiry unaccompanied site inspection in November 2012, that skips were stored along the entire length of the concrete drive, and I could see,

[1] This relates to the Town and Country Planning (Use Classes) Order 1987 (UCO) (as amended) wherein Class B2 is defined as General Industrial – use for the carrying on of an industrial process other than one falling within Class B1.
[2] Council Ref: 95/00363/CU.
[3] Council Ref: 07/00340/FUL.
[4] DEFRA Ref: APP/EPR/12/40.

from public land to the north, that the building was intact and also that large quantities of waste were stocked on the remainder of the site. At my recent unaccompanied site inspection, however, undertaken from the public land that surrounds the site on three sides, I noted that the building no longer exists. Much of the site has been cleared, although a large mound of up to about 8m in height, comprising soil-type material, mixed with bricks, rubble and other waste is situated in the north-eastern part. Smaller piles of waste, including metal girders, tyres and a few skips, exist close to the north-western and south-eastern corners. The access road is now completely cleared of all skips and other material. There was no activity on the site at the time of my visit.

THE APPEAL ON GROUND (b)

14. The appellants' case on this ground is based upon a claim that the activities carried out at the appeal site are all incidental to the lawful Class B2 use of the site, thus the alleged breach of planning control has not occurred as a matter of fact. Moreover, the Council had indicated its willingness to grant planning permission for the use of the site through the approval in 2007, albeit that the permission was eventually found not to have been implemented. Additionally, it is submitted that the Council are acting unfairly, as the reasons for issuing the notice indicate that the use is acceptable to them, subject to certain conditions. This suggests that the reason for the notice is merely to impose new conditions on the site which, in the light of an established use, they would otherwise be unable to do.

15. The Council consider that this ground of appeal appears to be misconceived, as the site was clearly used for waste transfer, tipping and skip hire as acknowledged by the appellants. Moreover, the Council has produced evidence to support their case that the site, as a matter of fact, has been used for such purposes.

16. In considering these matters, I am mindful of the fact that the burden of proof in an appeal on this ground, and on other legal grounds including grounds (c) and (d), lies with the appellants[5]. They must show, therefore, that, on the balance of probability, the matters alleged in the notice have not taken place. Those matters are the use of the site for three principal purposes – waste transfer, waste tipping and skip hire. However, in this case, the only evidence I have on this matter is that provided by the Council. This includes a copy of a survey undertaken by the Environment Agency in August 2011, showing the extent of waste material on the site and its location within the site. It amounted to about 8,793 cu m, covering an area of 3,254 sq m, as well as 1,167 cu m of waste within the building[6]. Further evidence in the form of photographs taken in March 2012[7] shows this material. No evidence has been produced of any significant waste transfer activities involving this material, rather it appears that a significant amount of the material on site, some of which remains, was brought from another site elsewhere in Darlington. I am satisfied, on the evidence before me, that the tipping of waste on the site on the site has occurred as a matter of fact.

17. As for waste transfer, the appellants do not deny that such activities had taken place, presumably in pursuit of the 2007 planning permission that was later

[5] *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.
[6] Appendix ENF14 produced by the Council.
[7] Appendix ENF13 produced by the Council.

found not to have been lawfully implemented. The exact details of such transfer activities have not been provided but, having regard to the burden of proof, I have no reason to find that they did not occur as a matter of fact. Indeed my conclusion on this aspect of the alleged breach is supported by reference in the appeal decision of August 2012, relating to the Notice of Revocation and Requirement to Take Steps, to waste acceptance and sorting taking place at the date of the Inspectors' site inspection on 9 August 2012, albeit on ground that did not have an impermeable surface[8].

18. With regard to skip hire, it is quite clear that the appellants do not deny that this activity has taken place, and I saw a large number of skips, marked with their company details, stacked on the access road during my visit to the vicinity of the site in November 2012. The two or three skips that were visible on the site at my recent inspection were similarly marked. The Council, in their evidence on this appeal also refer to full and unsorted skips being stored on the access road, because of a lack of room within the site itself, and to the company's website which advertises skip hire as part of their business. Although no details are provided of the latter, the appellants have not denied that this information is correct.

19. With regard to the contention that the Council sought, through the issue of the enforcement notice, to impose extra conditions on a use generally found to be acceptable, I cannot consider such matters in the context of an appeal on this ground. They relate to the planning merits of the use which is not before me as the required fees for the deemed planning application have not been paid. In all of the above circumstances, therefore, I conclude that the matters alleged in the enforcement notice have occurred as a matter of fact. The appeal on ground (b) fails.

THE APPEAL ON GROUND (c)

20. The appeal on ground (c) overlaps to some extent with that made on ground (b) as the appellants claim that the site has a lawful Class B2 use, and that the use alleged within the enforcement notice falls within that Use Class. They also claim that many businesses on the overall Industrial Estate frequently have skips on their site from time to time, thus the coming and going of those skips is a normal activity and incidental or ancillary to the main use of the site as a Class B2 industrial use. Therefore planning permission is not required for the use that was taking place at the date on which the notice was issued.

21. The Council contend, however, that whilst the previous use as a wood processing facility fell within Class B2, the current use is mixed and therefore falls outside any Use Class being *sui generis*. The use identified within the enforcement notice has materially different impacts from that which existed before thus a material change of use requiring planning permission has occurred. Furthermore, no permitted development rights exist for the mixed use that has taken place.

22. It seems to me that the principal arguments being put forward in support of this ground of appeal are that the uses alleged in the notice are within Class B2, and that the skip hire is ancillary or incidental to the main industrial use. However, this argument is flawed by the fact that it has not been shown that the skip hire business is genuinely incidental to either the waste transfer or the

[8] Appeal decision APP/EPR/12/40, paragraph 23.

waste tipping use and, in any event, the overall use of the site is clearly mixed and therefore cannot fall within a single Use Class. Waste tipping over much of the site appears to have taken place independently of any sorting or transfer of material; indeed significant parts of the waste have been in place for long enough to become vegetated, and I saw evidence of this at my recent inspection, with weeds, grassed areas and shrubs such as buddleia growing from the remnant piles of material.

23. No information has been supplied to show how the business has been operated, with documentation such as business records of the manner in which skip hire may have been used to facilitate the import of recyclable waste into the site, rather, from the evidence produced by the Council, it would appear that a variety of waste has simply been brought onto the land for tipping, with no prospect of any recycling taking place. This all indicates that a mixed use as specified in the notice has taken place. Such a mixed use cannot be regarded as falling within Class B2 or any other Class of the UCO and is therefore *sui generis*. It follows that planning permission is required for such a change of use from the lawful Class B2 use. As such permission has not been granted, the appeal on ground (c) fails.

THE APPEAL ON GROUND (d)

24. The appeal on ground (d) relies upon a claim that the use being carried out by the appellants has been taking place on the site for decades and is therefore immune from enforcement action. In particular the skip use is incidental to the main use of the site, and that use, including manufacturing, recycling and tipping of waste material and landfill has been taking place since at least 1866. Moreover, at the date of the appeal, the large building on the site still had railway tracks running into it which had been used for delivering and removing various raw materials and other goods.

25. The Council suggest that there is confusion between the appeal on grounds (c) and (d) but that, in any event, there is evidence that the alleged material change of use of the land took place within the ten years preceding the date of issue of the enforcement notice. These include statements made by relevant witnesses, contemporaneous documentation relating to the 2007 planning application, and a structural survey of the building undertaken in 1999.

26. For an appeal on this ground to succeed it has to be shown, on the balance of probability, that the alleged material change of use of the land took place more than ten years before the date of issue of the notice, that is before 23 December 2001. The submissions made by the appellants rely upon a contention that their use of the land falls within Class B2 as a general industrial use and that such use has been undertaken at the appeal site since the 19th century. However, I have already found that a material change of use of the site, from use as wood recycling unit within Class B2, to the mixed use alleged in the notice has, as a matter of fact, taken place. Reliance on historical general industrial usage cannot, therefore, override this fact.

27. Moreover, it is clear from the unchallenged evidence put forward by the Council, that the appeal site had a Class B2 use as recently as 2007. The Council's Committee Report of 12 July 2007[9] in respect of the 2007 planning application refers to the current use of the site as being a wood-recycling unit.

[9] Appendix ENF8 produced by the Council.

That use, from a written statement made by Mr A Puddick on 20 June 2012[10], started in about 2004, after purchase of the site by Mr P Foster. He also states that a skip hire business started later, and this is corroborated by a statement from Mrs C Ames, dated 26 June 2012[11], who says that operations at the site increased in intensity from 2005 to 2010.

28. The structural survey of the industrial building referred to by the Council is of no particular assistance either way on this ground of appeal, as it is dated 1999. However, from all of the above matters I am satisfied that the alleged material change of use took place within the ten years preceding the date of issue of the notice. The appeal on ground (d) therefore fails.

Other Matters

29. All other matters raised in the written representations have been taken into account including the claim that Article 6 of the Human Rights Act 1998 has been breached. On this matter, however, I am satisfied that the appellants were given sufficient opportunity to present their case at an oral hearing. A Public Inquiry was opened in November 2012, and the appellants could have instructed an agent to represent them, notwithstanding the inability of their main witness to attend due to the fact that he was held in prison on remand. An adjournment was agreed partly on the basis that representation would be obtained by the date of resumption, but no evidence was provided to show that such action had been taken. Further opportunities were, nevertheless, subsequently given for the appellant to attend a Public Inquiry, but various reasons were given for the dates specified being rejected. In all of these circumstances I am satisfied that the need to determine the appeals and provide finality to a clear beach of planning control outweighs any conflict with Article 6 particularly in the wider public interest relating to achieving appropriate remedial action through the cessation of the unauthorised use of the land.

30. This and all other matters raised do not, therefore, outweigh the conclusions reached on the main grounds and issues of these appeals.

Conclusions

31. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

FORMAL DECISIONS

32. The enforcement notice is corrected by:

(a) The insertion, at the start of Section 4 of the notice, of the sentence:

"It appears to the Council that the above breach of planning control has occurred within the last ten years";

(b) The deletion, in their entirety of Steps (a) to (e) in Section 5 of the notice and the substitution therefor of the following requirements:

"(a) Cease the unauthorised mixed use of the land for waste transfer, waste tipping and skip hire; and,

[10] Appendix ENF17 produced by the Council.
[11] Appendix ENF17 produced by the Council.

(b) Remove from the land all waste material and skips brought onto the land in association with the unauthorised use."; and,

(c) The deletion, in their entirety of sub-paragraphs (a) to (e) in Section 6 of the notice and the substitution therefor of the following periods for compliance:

"(a) In respect of step (a), three days.

(b) In respect of step (b), three months."

33. Subject to these corrections, the appeals are dismissed and the enforcement notice is upheld.

Martin Joyce

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 13 December 2013

by Martin Joyce DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 January 2014

Costs application in relation to Appeal Refs: APP/N1350/C/12/2169474 & 2169435
Land at Steel Store, St Nicholas Industrial Estate, Dodsworth Street, Darlington DL1 2NJ

- 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 Darlington Borough Council for a full award of costs against Albert Hill Skip Hire Limited and Mr Anthony Shepherd.
- The appeals were against an enforcement notice alleging the unauthorised change of use of the land from a B2 general industrial use to that of a *sui generis* mixed use of waste transfer, waste tipping and skip hire.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The Submissions for the Council

2. The Council submit that the appellants have behaved unreasonably in a number of respects, as set out in their written application for a full award of costs dated 26 September 2013. It is unnecessary to repeat that application here, but it covers a number of points. These are that:

   (a) The appeal was lodged in the name of parties who had not agreed to the appeal, and did not wish to appear;

   (b) The appellants failed to engage with the Council on the question of a further grant of planning permission;

   (c) The appellants failed to serve the required pre-Inquiry statement of case;

   (d) The appellants failed to produce any proofs of evidence;

   (e) The appellants failed to indicate to the Council any intention to give oral evidence, or to seek an adjournment, at the Public Inquiry, or generally to give any indication about how they intended to prosecute the appeals;

   (f) The appellants failed to cooperate in the production of a Statement of Common Ground;

   (g) Following the adjournment of the Inquiry, they failed to comply with directions to produce a Rule 6 Statement and proofs of evidence, or to appoint a competent person to represent them;

(h) The appellants failed to secure the attendance of a competent person to represent them at the Public Inquiry held on 6 November 2012 and 15 January 2013, in the knowledge that Mr A Shepherd was held in prison on those dates and could not attend;

(i) The appellants rescinded the agreement made on their behalf at the Inquiry on 15 January 2013 that the appeals could proceed by means of written representations; and,

(j) The appellants failed to comply with the written directions of the Inspectorate to provide proofs or other evidence for an Inquiry scheduled for 3 April 2013.

3. This unreasonable behaviour resulted in unnecessary or wasted expense in a number of ways. These are, briefly:

(a) The grounds of appeal were based on legal or factual arguments, where the burden lay with the appellants to support their arguments in a statement of case, evidence and submission, which they failed to do;

(b) The grounds of appeal were such that the Council had to obtain its own detailed evidence, and secure the services of an experienced advocate and supporting solicitor to deal with the issues raised. Moreover, this was necessitated for a number of dates over an unreasonably extended period of time;

(c) The failure of the appellants to engage with the Council in any way to discuss the current uses of the site, and the failure to reply to Planning Contravention Notices (PCN) served, necessitated the production of a use assessment and survey of a standard that would support enforcement action; and,

(d) The failure of the appellants to communicate in any way with the Council during the appeal, including not replying to written correspondence or returning telephone calls, meant it was impossible to agree any Statement of Common Ground and necessitated repeated correspondence with the Inspectorate about the progress of the appeals.

4. In all of these circumstances a full award of costs should be made.

The Submissions for the Appellants

5. The appellants have made no response to this application.

Reasoning

6. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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.

7. In this case, a number of sections of the Circular are pertinent to the application before me and Paragraph B4 of Part B gives examples of unreasonable behaviour which may result in an award of costs. These include the failure to produce statements or proofs of evidence; resistance to, or a lack of co-operation with the other party in providing information, discussing the appeal or in responding to a PCN, thereby extending the duration of the

appeal; not completing a timely Statement of Common Ground; failure to provide relevant information within statutory time limits; and, failing to attend or be represented at an Inquiry, resulting in unnecessary or wasted expense being incurred by other parties.

8. Additionally, Paragraph B30 of Part B states that an appellant's right of appeal to protect their interest in land has to be balanced against the expectation that all parties to appeals should act responsibly and not cause others to incur unnecessary or wasted expense in the process. In enforcement appeals the onus of proof regarding decisive matters of fact is on the person appealing.

9. In considering the application, it is necessary, firstly, for me to outline the history of these appeals and the subsequent proceedings that occurred. The appeals, against an enforcement notice issued on 23 December 2011, were made on 25 January 2012. The grounds of appeal were grounds (b), (c) and (d) and a Public Inquiry was requested in order that evidence could be tested. This was accepted by the Inspectorate and an Inquiry was arranged to start on 6 November 2012. No statement of case, proofs of evidence or other documentation was produced by the appellants in advance of the Inquiry, and the timetable for such matters, set out in the Inspectorate's letter of 27 January 2012, was not met. Indeed the only documentation produced has been the appellants' initial grounds of appeal.

10. The Inquiry was opened on 6 November 2012 but one of the appellants (Mr Anthony Shepherd) was not in attendance. It was explained that he was in prison on remand. A representative of his Company (the other appellant) was present and an application for an adjournment was made. This intention had been indicated in email correspondence shortly before that date[1]. The application was agreed and a date of 15 January 2013 was set for the resumption of the Inquiry, with deadlines set for the production of a Rule 6 Statement and a proof of evidence by 18 December 2012. This was confirmed to the appellants in a letter dated 12 November 2012. Advice was also given, at the Inquiry, that appropriate professional representation, such as a Planning Agent, should be obtained in the event of either Mr Shepherd or another representative of the Company being unavailable.

11. No further documentation was, however, submitted and no professional representation was obtained by either the set deadline, or by the date of the resumption of the Inquiry on 15 January 2013. At that Inquiry, an application for a further adjournment of the Inquiry, made by the same representative of the Company, was refused. Agreement was given, however, from both parties, that the appeals could proceed by means of the written representation method, and a deadline of 1 February 2013 for the submission of any further written comments from the parties was set. This was confirmed in letters from the Inspectorate dated 16 January 2013. The accompanied site inspection was arranged for 8 February 2013.

12. Before that date, however, an email was received from the appellant Company[2] withdrawing the agreement made at the Inquiry, on the basis that the appellants' rights under Article 6 of the Human Rights Act 1998, to a fair and

[1] An email from the appellant Company dated 1 November 2012 sought advice as to procedure having regard to the unavailability of Mr A Shepherd. The Inspectorate's response advised attendance at the Inquiry to request an adjournment.
[2] Email dated 30 January 2013.

public hearing, would be violated. The Inspectorate accepted this view and sought to arrange a resumption of the Inquiry previously closed. A date of 3 April 2013 was then arranged and notified to the parties but difficulties in arranging a secure location for the Inquiry resulted in a further postponement.

13. Subsequently, following the release from prison of Mr A Shepherd on bail in May 2013, further attempts to agree a date for the Inquiry were made. These attempts were, however, unsuccessful for a number of reasons including the unavailability of either the appellants', their agent or the Council's barrister. Finally, on 16 August 2013, the Inspectorate ruled that the appeal should revert to determination by the written representation method. Letters sent out on that date set out the revised timetable for the submission of documentation relating to the appeal, including any revised or additional statements, and comments on those produced by the other party. An unaccompanied site inspection took place on 13 December 2013.

14. Turning to the specific matters raised by the Council in this application I begin by observing that it is not unusual, in my experience, for appellants in enforcement appeals to appear and give evidence orally, and the relevant Procedure Rules[3] do not, as matter of fact, require written proofs of evidence to be produced, only that any proofs that may be produced should be sent to the other party in advance, together with a summary proof if required. However, those Rules do require other procedural matters to be complied with including the production of a Statement of Case (Rule 6(3)), and the preparation, together with the Local Planning Authority, of a Statement of Common Ground (Rule 16). Neither of these Rules was complied with and this, in itself, is unreasonable behaviour contrary to the guidance given in the Circular.

15. Additionally, the failure to either attend the Inquiry, or to arrange adequate representation, on either date on which it sat, was also unreasonable behaviour, notwithstanding that late notification was given, initially, of an intention to request an adjournment. However, having been granted an adjournment on 6 November 2012, the failure to then comply with directions given as to the production of a Statement of Case and proofs of evidence, and the arrangement of adequate representation for the resumed Inquiry compounded the unreasonableness of the appellants' conduct. In particular, appropriate representation could have avoided the subsequent interregnum following the appellants' withdrawal of their agreement to the written representation method on the basis of alleged violation of their human rights, a matter I deal with in my decision on the appeals. Moreover, subsequent requirements to produce Statements of Case, or comments on the Council's revised statement, were not complied with.

16. I do not have sufficient information before me to decide one way or the other on the question of whether the appellants failed to engage with the Council in discussions about an express grant of planning permission, presumably in the context of seeking to avoid enforcement action, but this does not deflect from the fact that little regard has been had to the formal procedure set out in the Rules for appeals of this nature. As a result, the Council has been caused to incur unnecessary and wasted expense including through the production of a Rule 6 Statement, the preparation of proofs of evidence and the employment of appropriate representation for the abortive Public Inquiry.

[3] The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 (SI 2002 No 2685).

17. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

Costs Order

18. In exercise of the powers under Section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Albert Hill Skip Hire Limited and Mr Anthony Shepherd shall pay to the Darlington Borough Council, the costs of the appeal proceedings described in the heading of this decision.

19. The applicant is now invited to submit to Albert Hill Skip Hire Limited and Mr Anthony Shepherd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Martin Joyce

INSPECTOR