

IN THE CROWN COURT AT LEWES

T20250017 and T20250018

BRIGHTON AND HOVE CITY COUNCIL

V

CHARLIE SOUTHALL

And

DRAGONFLY ARCHITECTURAL SERVICES LIMITED.

RULING ON COSTS

1. This ruling follows the decision by Brighton & Hove City Council to offer no evidence against the defendants on charges of failing to comply with an enforcement notice, contrary to section 179 of the Town and Country Planning Act 1990 (the Act). The ruling has been delayed somewhat, by my not sitting for some periods of planned and unplanned leave since hearing argument on this issue and as a result of seeking further materials from the parties, for which I am grateful to all.

Context.

2. The Montreal Arms public house sits on a prominent corner site on Albion Hill, in central Brighton. It is of some vintage and is of historical value. In particular, it is an example of a number of public houses in the vicinity noted for their attractive outer covering of glazed, green, ceramic tiles. It's listing on the Brighton & Hove City Council directory of local heritage assets states "*...the building contributes greatly to the streetscene.*". In fact, it had ceased being used as a public house and had stood empty prior to the defendant Charlie Southall through his

company Dragonfly Architectural Services Ltd, purchasing the building

1

in March 2022 in order to develop it. At that time, it was not subject to any particular planning restrictions though, it appears that since 2015 it had been included on BHCC's list of buildings of local historic interest. In due course, it was to be listed as an "Asset of Community Value" (of which more, below) but it was not so listed when Mr Southall purchased it nor when he commenced works upon it, which was when some of the external green tiles were removed and the poor state of the internal structure of the building started to be discovered.

3. In fact, when tiles started to be removed in March 2022, members of the public expressed concerns which were reported in local media, at the apparent damage being done to the building. The situation was brought to the attention of the local planning authority, Brighton & Hove City Council (BHCC). As is usual, as the local planning authority BHCC also has the role of enforcement of planning law, including if necessary, prosecution through the courts of alleged breaches of planning law. Until more information about the situation was established, BHCC issued a temporary stop notice (pursuant to s.171E of the Act) requiring no more tiles be removed.

4. By the following month, on 20th April 2022, BHCC had served an enforcement notice pursuant to s.172 of the Act, requiring the following:

"i. Cease removal of the glazed ceramic tiles from the facade of the building on the land, except to the minimum amount required to be removed to repair the lintels.

ii. Reinstate glazed ceramic tiles to all elevations where tiles have been removed or damaged as a consequence of the unauthorised works set out in paragraph 3 (which paragraph alleged that without planning permission glazed ceramic tiles had been removed from the facades of

the building).

iii. Reinstall the glazed ceramic tiles removed to repair the lintels.

2

iv. The new tiles being reinstated shall match the colours and finish of the existing tiles on each area of the elevation so that the four horizontal bands of colouring are replicated, as shown on the photographs attached at Annex 2.

v. All moulded details to the fascia and window cills being reinstated shall be replicated in material, colour and finish and reinstated.

vi. The lettering to the fascia being reinstated shall be replicated in font, size, colour, material and finish, where removed or damaged as a consequence of the unauthorised works.”

5. Mr Southall appealed the making of that enforcement notice but the notice was upheld and came into force on 17 July 2023, giving twelve months for compliance.

6. There followed significant emailed correspondence between BHCC and Mr Southall, about the appropriate way forward in view of Mr Southall's concerns about how best to comply with the enforcement notice. That correspondence is summarised in detail in a witness statement of BHCC planning enforcement and building control manager Marina Brigginsshaw, served by BHCC as evidence in support of the prosecution for failing to comply with the enforcement notice. The emails in full are exhibited to her witness statement. This witness explains that she manages both the planning enforcement team and the building control team of BHCC. In this correspondence commencing in June 2022, it is apparent Mr Southall explains why reinstatement of the tiles was not practical in view of the fact some were already damaged or deteriorating, some inevitably became damaged when it was necessary

to remove them to inspect the underlying structure of the walls to which they were affixed and in view of the substantial works of repair necessary to that structure and walls. Importantly in my judgement, he seeks repeatedly to engage in practical discussion with the BHCC - both

3

on-line and at on-site meetings with surveyors and engineers instructed by himself and employed by BHCC - about the best way to address the state of the entire building. This was not a situation in which there was intransigence on his part. On the contrary, I find the correspondence shows a developer keen to engage with BHCC to find the best solution to the state of the building, to preserve it's character while enabling it to function again in the 21st century, a developer keen to comply with rather than ignore the statutory framework to do so, a developer anxious to comply with the enforcement notice but equally anxious to explain why compliance was impractical. In addition, he complains to BHCC of the community hostility being directed toward himself and his family, made worse by what BHCC were to admit (and I find no reason to doubt) was an accidental publication of Mr Southall's home address. All this is summarised in his detailed and lengthy email to BHCC of 18th August 2022.

7. In addition to expressing his frustration at the course which matters had taken, he asks repeatedly for the time period for compliance with the enforcement notice to be extended, to enable all necessary works to be completed before the tiles are reinstated – which requests are repeatedly refused by BHCC. In support of those requests, in January 2023 he emailed BHCC attaching reports from a firm of chartered surveyors and consulting structural engineers, from a second firm of consulting engineers and from Rentokil Property Care. The second of these reports – from Couch Consulting Engineers following their inspection of the property in October 2022 – is illuminating as to the state of advanced deterioration of almost all aspects of the building. As will become apparent below, as Mr Southall had been urging BHCC to accept,

compliance was not as simple as affixing the tiles back on the building. In my judgement, receipt by BHCC of this report forms a highly relevant and significant backdrop to the decision of BHCC about two and a half years later, to bring this prosecution and in turn, to the issues I have had to consider in this judgement. Neither was the significance of this report lost upon the planning inspector whose findings in November 2025, led

4

to the collapse of this prosecution and whose appeal decision findings I deal with below. Further in my judgement, the receipt by BHCC of these reports in January 2023 ought to have caused BHCC to withdraw the enforcement notice or at least to waive or relax the requirements of the notice or extend the period for compliance, pursuant to s.173A of the Act.

8. In the meantime, the correspondence between Mr Southall and BHCC about all these issues, continued into 2023 and 2024. Ultimately, in March 2024, Mr Southall applied for full planning permission to renovate and develop the entire building. Somewhat surprisingly in view of the lack of significant progress between the parties in the previous two years, such planning permission was granted quickly, on 6 June 2024 but subject to certain conditions regarding BHCC approving samples of the proposed render and roof and wall tiling. In fact, it wasn't entirely surprising that such planning permission should be granted quickly as by the summer of 2024, it must have been apparent to anyone who knew of the true state of the building that unless works of repair were commenced quickly, parts of the building were in danger of collapse, with consequent risk to anyone unfortunate enough to be passing by when it did.

9. Six weeks after that grant of planning permission, the time period for compliance with the enforcement notice ended, on 17 July 2024. Plainly, it would have been impossible in view of the extent of the necessary

works of repair to the structure of the building, to comply with the enforcement notice in so short a time. As will become apparent, no action or warning of imminent action by BHCC regarding the failure to comply with the enforcement notice was to be made for a further ten months in May 2025. This was understandable for – so far as I can determine - two reasons; Firstly, full planning permission for the redevelopment of the entire building had now been granted. Reinstating tiles before that development had barely started would have made little

5

sense because even to the layman, it would have been obvious the tiles may need to be removed again in the course of the greater development of the building if for no other reason than to protect them from accidental damage. This reason for not immediately refixing the tiles, was supported by the results of inspections of the internal structure of the building – the results of which BHCC became fully aware – which results were making increasingly apparent the extent to which that internal structure had deteriorated and was in need of urgent, major repair. Secondly, the surface of the walls to which the tiles would be re affixed – the substrate - had also deteriorated significantly. Again, on the information available to me, attempting to reinstate the tiles before all those works of repair were completed would have been as pointless and as ineffective as trying to tile the exterior of a sandcastle.

10. That the re-instatement of the tiles prior to redevelopment of the building was not practical and thus, that the requirements of the enforcement notice were not practical either, were the findings and natural consequence of the decision of a Planning Inspectorate inspector. The defendant had appealed BHCC's refusal to approve his submissions regarding further removal of tiles. The inspector's appeal decision is dated 17 November 2025 and includes a helpful summary of events. It includes the following at paragraph 8; *“By way of letter dated 9 February 2024 the appellant's building engineer summarised the*

building's condition, informed by a structural inspection undertaken in October 2022 [seemingly a reference to the report by Couch Consulting Engineers referred to at paragraph 7, above]. It said that the complete overhaul of the building's external envelope would be necessary, and that the inherent weaknesses of bungaroosh construction, combined with the current state of disrepair and ingress of water, could mean that significant sections of wall would need to be rebuilt to ensure structural integrity." An open source search of the internet reveals "Bungaroosh" is an historic form of composite building material peculiar to Brighton & Hove, now known for its poor water resistance and tendency to

6

structural weakness. It seems that time had shown this was not the best building material for a coastal pub.

11. Paragraph 10 of the inspector's decision states; *"However, by way of an email dated 2 June 2025 to the Council, the appellant provided a detailed explanation of why, in the context of the surveys that it had commissioned, the removal of all tiles was now its proposed approach. This included additional justification that was not set out in [earlier] surveys, for example in respect of the building's regulatory compliance and energy performance."*

12. At paragraph 12 the inspector found the report materials provided by and on behalf of the defendant; *"...clearly described the manifold issues with the existing structure, the need to address issues with the walls which are the substrate for the facade tiling, and a range of practicalities associated with such works."* The inspector concluded that the defendant's proposed way to proceed was appropriate, namely to record the tiles on the facade before removing them, to store them, and then return them to their original position alongside replica tiles to replace those which had been lost or which could not be reasonably

salvaged. This would also avoid unintentional damage to tiles if they were left in situ during building works.

The defendant's application for costs against BHCC.

13. I have set out the chronology above – with some of my own observations - because while the inspector's appeal decision came only after the enforcement notice compliance period had long since expired and the prosecution commenced, that chronology describes the context in which the decision was taken by BHCC in May 2025, to prosecute the defendants for failing to comply with it. On 15th May 2025, BHCC asked the magistrates court to issue a summons which commenced this prosecution, which the court issued on 20th June 2025. The defendants

7

were served with it on 4th July 2025. It was this summons which led to the crown court indictment against Mr Southall and Dragonfly Architectural Services Ltd, in respect of which no evidence was offered and not guilty verdicts were entered, on 27th February 2026.

14. There were two counts on the indictment, one each in identical terms against Mr Southall's company Dragonfly Architectural Services Ltd and as against himself in person as the director of Dragonfly. Each count alleged failure to comply with an enforcement notice, contrary to s.179 of the Town and Country Planning Act 1990.

15. Section 179 of the Town and Country Planning Act 1990 states;

179 Offence where enforcement notice not complied with.

(1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of

the land is in breach of the notice.

(2) Where the owner of the land is in breach of an enforcement notice he shall be guilty of an offence.

(3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.

16. The particulars of offence of both counts were in identical terms, that the defendants did fail before 17 July 2024 to meet those same requirements regarding the tiles and others aspects of the appearance of the building I have listed in paragraph 4 above. S.179 provides that a person guilty of an offence under this section is liable on conviction on indictment to a fine.

17. To defend those criminal proceedings, Mr Southall has been put to considerable expense, in respect of which he now seeks an award of

8

costs against BHCC, pursuant to s.19(1) of the Prosecution of Offences Act 1985. That section gives this court power to make an order that a party to criminal proceedings pay another party's costs if those costs were incurred "*...as a result of an unnecessary or improper act or omission by, or on behalf of...*[that first party to the proceedings].

18. The figure for costs sought by the defendants is £20,268.60. That consists of £11,475.60 by way of disbursements to legal advisors, expert witnesses and administrative support, Mr Southall's rail fares to court on various occasions and a sum of £8,797 representing Mr Southall's own time as a litigant in person throughout the proceedings.

The law.

19. In addition to the terms of s.19, I have been referred to and have

considered the judgements in *Evans v SFO* [2015] 1 WLR 3595 and *R v Cornish; R v Maidstone and Tunbridge Wells NHS Trust* [2016] EWHC 779. In *Evans* Hickinbottom J. said (at para.145) “*It is also important to bear in mind that the section 19 jurisdiction is summary in nature, and so, to form the basis of an application under section 19, the conduct of the prosecution must be starkly improper such that no great investigation into the facts or decision making process is necessary to establish it.*”

20. Further, at para.146; “*I consider that cases in which it will be appropriate to make (let alone grant) a section 19 application against a public prosecutor will be very rare, and restricted to those exceptional cases where the prosecution has made a clear and stark error as a result of which a defendant has incurred costs for which it is appropriate to compensate him. For example, where it is alleged that the decision to prosecute or a similar prosecutorial decision is the improper act upon which a section 19 application is founded, it is difficult to conceive of circumstances in which it could succeed unless the decision was shown*

9

to be unlawful in a public law sense, i.e. leaving aside decisions unlawful because made in pursuance of an unlawful policy of the prosecutor (or made other than in accordance with the prosecutor’s own lawful policy), if the decision was one which no reasonable prosecutor could have made. If it is a decision that a reasonable prosecutor could have made, then generally a section 19 costs order will not be appropriate.”

21. In *R v Cornish and Maidstone and Tunbridge Wells NHS Trust* [2016] EWHC 779 (QB), after reviewing a variety of earlier authorities including *Evans*, Coulson J. identified (at para.16) the following six principles when a court is considering such an application:

(a) Simply because a prosecution fails, even if the defendant is found to have no case to answer, does not of itself overcome the threshold criteria of s.19.

(b) Improper conduct means an act or omission that would not have occurred if the party concerned had conducted his case properly.

(c) The test is one of impropriety, not merely unreasonableness. The conduct of the prosecution must be starkly improper such that no great investigation into the facts or decision-making process is necessary to establish it.

(d) Where the case fails as a matter of law, the prosecutor may be more open to a claim that the decision to charge was improper, but even then, that does not necessarily follow because "no one has a monopoly of legal wisdom, and many legal points are properly arguable".

(e) It is important that s.19 applications are not used to attack decisions to prosecute by way of a collateral challenge, and the courts must be ever vigilant to avoid any temptation to impose too high a burden or standard on a public prosecuting authority in respect of prosecution decisions.

(f) In consequence of the foregoing principles, the granting of a s.19 application will be "very rare" and will be "restricted to those exceptional cases where the prosecution has made a clear and stark error as a result of which a defendant has incurred costs for which it is appropriate to compensate him".

Discussion.

22. In helpful written and oral submissions, Mr Elton on behalf of BHCC submits firstly, the court need not and should not consider an award of costs against BHCC at all. Instead, the court can make a defendant's costs order, pursuant to s.16 of the Prosecution of Offences Act 1985. Such an order is relatively routine in cases which have resulted in not guilty verdicts and though it will not pay for Mr Southall's time in preparing and conducting his defence, it will meet his disbursements and travel expenses. This is opposed by Mr Southall because firstly, a defendant's costs order would not pay all his costs and secondly, because he asserts BHCC have put him to those costs as result

of their “...*unnecessary or improper act or omission*...”. In addition, Mr Southall submits the public should not have to pay his costs via a defendant’s costs order and instead, those costs should be met by BHCC directly. Of course, BHCC being publicly funded, the public will pay one way or another if either order were made.

23. On the question of whether an award of costs should be made under s.19, Mr Elton draws my attention to the test in s.19, which is not that costs have been incurred because a hearing has proved to be unnecessary but rather, that costs were incurred as a result of some “...*unnecessary or improper act or omission*..” by BHCC, of which he submits, there has been none. He submits BHCC as the planning authority were under a statutory duty to issue an enforcement notice if the relevant criteria to do so were met (which in BHCC’s opinion, they were), it wasn’t complied with in the specific time and therefore it was right that the defendants were prosecuted for failure to comply. However, in my judgement there are two difficulties in accepting that logic. Firstly, it is arguable that when full planning permission for the entire redevelopment of the building was granted in June 2024 – six weeks before the time for compliance with the enforcement notice expired – s.180 of the Town

11

and Country Planning Act 1990 operated to cause the enforcement notice to cease to have effect. S.180 states:

“(1) Where, after the service of—

(a) a copy of an enforcement notice; or

(b) a breach of condition notice,

planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.”

24. In further correspondence following the grant of full planning

permission in June 2024, the apparent effect of s.180 in causing the enforcement notice to cease to have effect, was advanced by Mr Southall directly to BHCC but BHCC never accepted that argument.

25. The second difficulty with accepting Mr Elton's logic justifying BHCC's decision to prosecute is why, if that logic be correct, it took ten months from when the period for compliance expired in July 2024, to May 2025 for BHCC to decide to prosecute.

26. Of course, long delays often occur between when a crime is alleged to have been committed and when a prosecution commences. Sometimes a crime isn't complained of or discovered for a long time. Victims often have good reasons for not wishing to complain straight away. Lengthy investigations are often needed to establish if a crime has been committed at all. Evidence must be gathered and all must be reviewed by the prosecuting authority to ensure the evidential and public interest tests for any prosecution are met. However, I have been provided by or on behalf of BHCC with no such reasons for that delay. Of course, if BHCC's logic is correct that "the enforcement notice wasn't complied with within the specified time period and therefore we were under a statutory duty to prosecute", there would appear to be no need for delay

12

at all. BHCC could have commenced a prosecution the day after the time period expired but that didn't happen.

27. In addition to considering why BHCC waited ten months before deciding to prosecute, I turn to the far greater question of why the decision was taken to prosecute at all. I have sought repeatedly, an explanation from BHCC for why that decision was taken in view of what has been set out above about the impracticality of complying with

the enforcement notice but none has been given. During oral submissions to me on the issues of costs on 22nd May 2026, legal professional privilege was not waived by BHCC which was of course, their right. As a result, I am left to devine the reasons for that decision as best I can.

28. In fact, Mr Southall advances reasons why in his opinion, there was delay in BHCC deciding to prosecute and why a decision was ultimately taken to prosecute him; those reasons are that BHCC knew perfectly well from an early stage in the history of this matter that compliance with the enforcement notice was non-sensical in view of the state of the structure of the building and of the tile substrate and the only reason for the prosecution was because BHCC succumbed to public and political pressure to bring it. In so succumbing, BHCC took into account matters which it was wholly improper for them to do and caused the defendants to be prosecuted to appease ill-informed public opinion which BHCC knew was incorrect and yet which they did little if anything, to correct. In advancing these accusation, Mr Southall relies upon the following sequence of events:

(i) On Monday 23rd September 2024, (about 8 months or so before the decision was taken to bring this prosecution), Siân Berry MP, the member of parliament for Brighton Pavilion in which constituency The Montreal Arms is situated, wrote by email to Marina Briggshaw, to

follow up correspondence with the previous constituency MP Caroline Lucas. The email reports several of her constituents are anxious about the premises falling into further disrepair and seeks clarification from Marina Briggingshaw on the current position regarding enforcement by prosecution or direct action (“direct action” appears to be a reference to a local planning authority using it’s own powers and resources to make

safe something presenting a risk of harm to the public and then billing the party responsible for creating that risk). Interestingly, the email from Siân Berry MP enquires whether the owner of the premises is cooperating but needs more time – which in my judgement, was exactly what Mr Southall was doing and was asking. A reply was given by Marina Briggshaw on 27th September 2024, saying essentially, the situation was complex, BHCC was seeking to work with the owner but keeping BHCC's options open. The reply from Marina Briggshaw also acknowledges that if tiles were replaced they would have to be removed again to repair the lintels – precisely what Mr Southall has argued throughout. Further, whilst BHCC retained the option to prosecute, this would not directly resolve the issue of the external appearance of the tiles.

(ii) Siân Berry MP emailed Marina Briggshaw again at 11:22am on 1st October 2024, again expressing opinions of her constituents and stating that in the absence of any clear activity at the site to suggest the requirements of the enforcement notice were being addressed “...it does feel appropriate for the council to push the owner to adhere to the enforcement notice, especially if there is no engagement and clear commitment to undertake work within a set time frame.” I observe that full planning permission for the redevelopment of the building, with all the attendant work necessary before tiles could be refixed, had been granted four months earlier. The only delay in progressing with works appears to have been in BHCC approving Mr Southall's submissions regarding examples of replacement tiles. The email from Siân Berry MP continues that if the council does not address things swiftly, there will be a loss of community confidence, it is a high profile local case, unless

there is fairly swift action it may send a signal to other developers about enforcement and follow up when breaches occur, which could create risks to other buildings in the city.

(iii) On the same day Siân Berry MP emailed Marina Briginshaw on 1st October 2024 (as above), Marina Briginshaw replied at 4:56pm to an email from a Brighton & Hove City councillor named Tim Rowkins, which email I do not have. Nonetheless, the email from Marina Briginshaw to Councillor Rowkins states the council is considering “*next steps in enforcement terms.*” The email sets out possible types of enforcement and the final paragraph states “*We are considering our options at present....*”. Councillor Rowkins replies to Marina Briginshaw by email at 5:42pm the same day, stating “*The feeling in the community*” was that Mr Southall had “*acted in bad faith from the outset*”, the removal of tiles was “*an act of vandalism on a historic and valued building*”, the passing of the time limit for the enforcement notice “*without consequence*” was “*not palatable to residents*” who would see the “*villain getting away with it*”. Councillor Rowkins expressed the belief that Mr Southall would not begin the repairs in a timely fashion without “*us*” (I presume he meant BHCC) “*taking a very firm approach*”. In my judgement, this email amounts to an elected council member having determined together with his constituents, that the defendant was a vandal and a villain who should be prosecuted. In my judgement, it was a blatant attempt to force a prosecutorial decision for political reasons. Sadly, it seems to have worked.

(iv) The timing of what happened next is impossible to ignore and in my judgement, any suggestion of it being mere coincidence can be dismissed. I do not know what time of day it happened but again the same day as the above exchanges of emails - 1st October 2024 - BHCC Senior Planning Officer Allison Palmer wrote a formal letter to Mr Southall, to be delivered by hand, stating the council had now commenced an investigation into the alleged breach of the enforcement

notice. The letter goes on to warn that an owner of land in breach of an enforcement notice shall be guilty of a criminal offence, that the local authority considers there has been a serious breach of the Town and Country Planning Act and requires Mr Southall to answer a series of questions including whether he considers he has a reasonable excuse for failing to comply with the enforcement notice. In my judgement, this was an extraordinary request in view of all the information BHCC had about the state of the building and in view of all the correspondence in person and on-line between BHCC and Mr Southall. The letter also includes the formal caution given to all defendants when arrested or being asked formally about their alleged or suspected commission of a criminal offence. The letter ends with a series of warnings given pursuant to the Police and Criminal Evidence Act 1984 including “*I have reason to suspect you committed the alleged offence.*” In the absence of explanation to the contrary, in my judgement the issue of the letter by Allison Palmer on 1st October 2024 was done as an act of appeasement of the political pressure being brought to bear upon BHCC to take action regarding Mr Southall’s failure to comply with the enforcement notice – regardless of the abundant information in the knowledge and possession of BHCC about the reasons for that failure.

(v) There the matter rested for six months, with seemingly, no further action by BHCC that I am aware of, to commence a prosecution in court. However, At 12:26hrs on 1st April 2025, Siân Berry MP emailed BHCC planning manager Nicola Hurley. The email was copied to Marina Briginshaw. The email commences by thanking Nicola Hurley for getting back to her “*the other day*”. I’ve not seen the earlier exchange referred to. Nonetheless, Siân Berry MP’s email of 12:26pm appears critical of BHCC regarding the premises being an “ACV”. My understanding is that this refers to an Asset of Community Value, a scheme created by the Localism Act 2011 enabling communities to identify and protect assets of importance and value to that community. The scheme requires the community to be notified if a sale of such an

asset is proposed, thereby enabling the community to bid to purchase the

16

asset and preserve it for the benefit of the community. Significantly in my judgement, she refers to an apparent failing or failings by BHCC to follow due process regarding communication of the sale of the premises (presumably, the sale to Mr Southall). She also refers to the council's "*...oversight notifying the local community and updating it's ACV register...*". Further, she asks when will the council take enforcement action in relation to the failure (of the defendant, I presume) to adhere to terms of the enforcement notice and she asks why the ACV register was not updated. Her last question is "pointed"; she asks if there is any reason that the information about the sale (again, I presume this refers to the sale of the premises to Mr Southall) was not shared with residents corresponding with the council in recent months "*...or was a decision made not to share this information with anyone else but the nominator*", which last word I take to be a reference to the person or persons who nominated the premises for inclusion on BHCC's list of assets of community value. The email concludes by making plain that her priority is for there to be a resolution involving the building being made safe, tiles to be replaced and repairs happen but she ends by repeating the "*...significant level of community concern...*" about the premises and the "*...low level of confidence ...*" in the messages she was receiving from residents. I make no criticism of Siân Berry MP for sending this email, it was after all, her duty as a Member of Parliament to express and represent the concerns of her constituents. However, in my judgement, this email voices two clear criticisms of BHCC: firstly, for failing to notify the community of the sale of the premises to the defendant and secondly for not taking action to enforce the enforcement notice.

(vi) The same day, at 16:42hrs on 1st April 2025, Nicola Hurley who was the first recipient of Siân Berry MP's email above, in turn emailed Rachael Harding who was the Acting Head of Strategic

Communications and Engagement at BHCC referring to receiving “*quite a number*” of emails from “*Siân*” about the premises and seemingly suggesting a form of words for a reply to Siân Berry MP. Rachael

17

Harding replies to Nicola Hurley at 17:12hrs that day suggesting an amended form of words for the reply to Siân Berry MP.

29. It was now about six weeks before BHCC asked the magistrates court to issue a summons on 15th May 2025 but there was yet another significant event which ought in my judgement, to have caused BHCC to resist the growing public pressure to act. On 6th May 2025, nine days before BHCC sought a summons which would formally commence the prosecution, a member of BHCC’s planning team named Steven Dover received a report from a man named Colin Bannon of BHCC’s Heritage Team, who it would seem, had been asked to examine in detail Mr Southall’s proposals and submissions to BHCC regarding replacement tiles, the surfaces to which they were to be fixed and his proposals for removal and re-use of existing tiles. The Heritage Team reported all of Mr Southall’s proposals and submissions as “acceptable”. Even more importantly in the context of this ruling, was the last part of the report which states “*Amount and rationale of all tiles removed accepted.*”. This was the clearest vindication – from a department of BHCC itself - of the need for the removal of the tiles which the enforcement notice required to be re-fixed. In my judgement, it must have been clear to BHCC that the requirements of the enforcement notice were untenable and so must be any prospect of successfully prosecuting Mr Southall for failing to comply with it. And yet, nine days later, that is precisely what BHCC did.

30. There remained yet one more opportunity for BHCC to think again about whether this prosecution should proceed. It came several weeks

later on 3rd July 2025 - which was the day before the summons which had now been issued by the magistrates court was served upon Mr Southall - in an email to Marina Brigginsshaw from a firm of consulting engineers named Stephen Wilson Partnership Ltd (“Wilsons”). From the contents of the email, it would appear Wilsons had been instructed by BHCC to express an opinion upon other professional reports about the

18

state of the building. The email mentions the report from Couch Consulting Engineers I have mentioned in paragraphs 7 and 10 above, which had described the parlous state of the building. The email from Wilsons accepts that the reports confirm the building was in a very poor state of repair and extensive structural and non-structural works, including partial rebuilding was required. Wilsons expressed the opinion that since the date of the last of the reports in February 2024, further deterioration was suspected. Further, Wilsons reported that structural repairs and strengthening of perimeter walls meant tiles will need to be removed and the extent of such removal would be difficult to limit to just the area of the repairs. Indeed, they expressed the opinion that replacement of all the remaining tiles – at least at ground floor level – on a suitably prepared substrate may prove to be the better long term solution. The email concludes with; “*...from a structural engineering perspective there does not seem to be anything to challenge here.*” Thus, an independent firm of structural engineers instructed by BHCC, were wholly supportive of Mr Southall’s position regarding replacement of tiles and the impracticality of the enforcement notice.

31. And yet, the prosecution continued. On 18th August 2025 the case was sent by Sussex (Central) Magistrates Court to this court, where a plea and trial preparation hearing was held before myself on 15th September 2025 but by which date BHCC had not yet served a pre requisite for any plea and trial preparation hearing - an indictment containing the charges to which he was expected to enter a plea.

However, Mr Southall had been busier than BHCC since the summons was served upon him and he had served a number of procedural applications. In my judgement, none of those applications were frivolous and all appeared to merit consideration by the court and a detailed response from the prosecution. I adjourned the case for a further case management hearing on 9th January 2026, at which it was anticipated arraignment would take place (assuming an indictment had been served) and when the court would consider the various procedural applications made by Mr Southall.

19

32. In the meantime, there followed the planning inspector's appeal decision of 17th November 2025 (as per paragraphs 10 to 12, above), approving Mr Southall's position regarding removal of tiles. A copy of the appeal decision was sent by Mr Southall to this court in December 2025 and was brought to my attention.

33. When the further case management hearing was held before myself on 9th January 2026, I asked prosecuting counsel if the case had been reviewed in light of the planning inspector's appeal decision of 17th November 2025. I was told it had not. I adjourned for such a review to take place. On 23rd February 2026 BHCC notified the court it was no longer considered in the public interest to proceed. That led to the aforementioned hearing before myself on 27th February 2026 at which no evidence was offered and not guilty verdicts were entered against Mr Southall and Dragonfly Architectural Services Ltd.

Decision.

34. There are many cases in the crown court where, despite them being later withdrawn, dismissed or resulting in not guilty verdicts, it was perfectly proper they should be brought by the prosecuting authority in question. Often, there will be abundant evidence a crime has been

committed but the prosecution authority may be unable ultimately to prove it was the defendant who committed it. Similarly, even without supporting evidence there may be a clear complaint from a person of having been the victim of a criminal offence but the case turns upon the credibility of that complainant, of the defendant or other witnesses. As the case law I have set out above makes plain, awards of costs against the prosecution must not be made every time a case does not result in a finding of guilt. Such orders must be made only in exceptional cases.

20

35. I remind myself of the judgement of Hickinbottom J. in *Evans* (above) that “...to form the basis of an application under section 19, the conduct of the prosecution must be starkly improper such that no great investigation into the facts or decision making process is necessary to establish it.” and that “...a section 19 application against a public prosecutor will be very rare, and restricted to those exceptional cases where the prosecution has made a clear and stark error...” and further; “...if the decision was one which no reasonable prosecutor could have made.”

36. In my judgement, BHCC knew perfectly well from, if not before the enforcement notice was issued, then shortly afterwards, how impractical, non-sensical and some might argue impossible, it was to comply with. I have not been made privy to the decision making processes regarding the issue of the enforcement notice nor the decision to prosecute Mr Southall for failing to comply with it. I have referred by name to a number of members of staff of BHCC but only because of their known involvement in the history of this matter and I don't know if any one or more of them took part in those decision making processes. As a result, I do not single out any of those persons for blame.

37. Nonetheless, in my judgement, the decision to prosecute was one which no reasonable prosecutor could or should have made. In view of the history I have set out above and in the absence of some satisfactory explanation to the contrary, I am driven to the following conclusions:

(i) That the decision to commence this prosecution ought not to have been made after the grant of full planning permission and the operation of s.180 of the Town and Country Planning Act.

21

(ii) That the decision to commence this prosecution was made by ignoring the evidence that in all practical senses the enforcement notice was either not capable of being complied with or that it was non-sensical to attempt to comply with it.

(iii) That the decision to commence this prosecution was made by ignoring the abundant evidence of Mr Southall's potential defence under s.179(3) of the Act, that he did everything he could be expected to do to secure compliance with the notice. As a result, neither the evidential nor the public interests tests for bringing a prosecution could be met.

(iv) The decisions to bring and continue with this prosecution had instead, everything to do with firstly, deflecting growing criticism of BHCC for not providing the community an opportunity to purchase the premises under the Asset of Community Value scheme and secondly, to appease the growing public pressure to prosecute a person whom an elected representative of BHCC had already decided was a vandal and a

villain. In my judgement, the decision to prosecute Mr Southall was starkly improper and was a decision no reasonable prosecutor could or should have made. As a result, I'm satisfied this is an exceptional case and that an order pursuant to s.19 should be made against BHCC, rather than via a defendant's costs order pursuant to s.16 of the Prosecution of Offences Act 1985.

38. Mr Southall has served a schedule of his costs. I'm satisfied his costs for professional fees, travel, printing and stationery are appropriate and should be met by BHCC. However, I'm not satisfied it's appropriate to reimburse him as a litigant in person, on the basis of attributing to himself an hourly rate (albeit a modest rate) for his time in preparing his and his company's defence. As a result, the figure of costs to be paid by BHCC to Mr Southall is £11,475.60.

