
Costs Decision

Site visit made on 28 November 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Costs application in relation to Appeal Ref: APP/C3430/C/22/3295538 Land at the rear of 8 Baggeridge Close, Gospel End, Staffordshire DY3 4AJ

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr D Bytheway for a full award of costs against South Staffordshire District Council.
 - The appeal was against an enforcement notice alleging the making of a material change of use of the Land and associated unauthorised development and engineering works to facilitate that change of use including, but not limited to the installation of a garden pond, the laying of a hardstanding base and siting of a shipping container, the erection of fencing and the raising of the land levels to level off the Land to facilitate that change of use for use as domestic residential garden land.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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 has applied for an award of costs on the basis that the Council acted unreasonably through - (1) a failure to act upon evidence, which it is claimed confirmed that the alleged planning breach was not occurring; (2) a failure to assemble and share accurate evidence to justify its requirements and to make clear the precise steps which would need to be taken; and (3) withholding information until the appeal stage. Had the Council behaved appropriately, it is argued that the appeal and consequential expense could have been avoided.
4. There was a disagreement between the parties about whether or not a breach of planning control had occurred. The Council was alerted to a potential breach and its officers visited the site on several occasions to investigate. It concluded that a breach had taken place and communicated this to the appellant. The appellant sought to persuade the Council otherwise but the difference of opinion remained. It is clear that the Council did have regard to the appellant's evidence, emails were responded to in a timely manner and site meetings took place. However, the Council reached a different conclusion. This does not amount to unreasonable behaviour.

5. There is a dispute about whether or not material resulting from development on adjoining land remained on the appeal site, thus contributing to the change in levels that facilitated the breach. The appellant suggests that the Council should have supplied an accurate topographical survey that had been undertaken prior to the works. However, there was no reason why the Council should have this information since it would not have been aware of the impending works. The appellant, on the other hand, was aware of their plans for the land and could have commissioned a survey. In my Decision, I explained that the onus of proof lies with the appellant.
6. Moreover, Section 172(1) of the 1990 Act provides that a local planning authority may issue an enforcement notice where it appears that there has been a breach of planning control and it is expedient to issue the notice. The Council did not act outside of its powers in issuing the notice. It identified the alleged breach as a material change of use and described the breach, plus what it considered to be facilitating works in the notice. Its reasons for issuing the notice refer to the development plan and the National Planning Policy Framework in order to explain why it considered it expedient to issue the notice. In addition, it commissioned a topographical survey in an attempt to identify previous land levels and the amount of material that should be removed. I do not consider this amounts to unreasonable behaviour.
7. It is maintained that the Council withheld information. However, it is clear from the submissions of both parties that the Council shared relevant information when this became available. Critical evidence was not withheld. The topographical survey was not necessary as the notice could simply have required the land to be restored. The surveyor's report included in the Council's appeal statement explained the methodology and provided further details. It was presented at the appropriate time in the appeal process.
8. I am satisfied that the Council carried out adequate prior investigation and there is no evidence that the appeal could have been avoided.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Debbie Moore

Inspector