
Costs Decision

Site visit made on 17 January 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 16 March 2017

Costs application in relation to Appeal Ref: APP/J1860/C/16/3156498 Land at Temeside Cottage, Temeside Way, Powick, Worcestershire WR2 4QP

- 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 Mrs Tina Dolan for a full award of costs against Malvern Hills District Council.
 - The appeal was against an enforcement notice alleging the raising of the level of the ground together with the construction of a roadway and hardstanding on the Land.
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Decision

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

Procedural Matter

2. In their costs submission the appellant argues that the enforcement notice is a nullity. This matter is dealt with in my Decision.

Reasons

3. The Planning Practice Guidance (PPG) advises 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.
 4. The appellant submits that the Council issued an enforcement notice before an agreed timescale in which to submit a planning application and refused site meetings with the appellant. The timing and issue of the notice put the appellant in a position where she was forced to make an unnecessary appeal and lose the time needed to either apply for planning permission or to arrange a meeting with the Council. Therefore, unnecessary costs were incurred.
 5. In an email to the appellant dated 4 July 2016 the Council requested the submission of a planning application within fourteen days. In the same email the Council asked the appellant to give an indication of her future intentions within three days. I have been provided with no evidence that the appellant indicated to the Council her intention to submit a planning application. The enforcement notice was subsequently issued on 13 July 2016.
 6. Section 172(1) of the Act states that the local planning authority may issue a notice where it appears to them that there has been a breach of planning control, and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
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7. Before issuing the notice the Council carried out an investigation which included a number of site visits. There is no evidence before me to suggest that the Council's investigation or its communication with the appellant was not sufficiently diligent such that the need to serve the notice could have been avoided. Moreover, I consider that the Council in its appeal statement provided sufficient evidence to support its reasons for issuing the notice.
8. The appeal was made under grounds (c), (f) and (g). As detailed in my decision I have found on the evidence before me that the raising of the ground level, construction of a roadway and hardstanding to be development for which planning permission is required. No appeal under ground (a) was made and the planning merits of the case were not considered.
9. In planning appeals, the parties involved are normally expected to meet their own expenses. Whilst the appellant will, no doubt, have incurred expense in pursuing the appeal the Council has exercised its duties in a reasonable manner. Expense incurred by the appellant is not as a direct result of any unreasonable behaviour (either substantive or procedural) by the Council.
10. For the above reasons, and with regard to all other matters raised, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Elizabeth Jones

INSPECTOR