
Costs Decision

Site visit made on 26 April 2017

by Simon N Hand MA

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

Decision date: 03 May 2017

Costs application in relation to Appeal Ref: APP/U2235/C/16/3156118 Howe Court Wood, Crismill Lane, Thurnham, Kent

- 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 Mr Chris Saunders for a full award of costs against Maidstone Borough Council.
 - The appeal was against an enforcement notice alleging the laying of hard surfacing within an area of designated Ancient Woodland.
-

Decision

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

The Case for the Parties

2. The appellant argues that the Council failed to carry out proper prior investigation before issuing the notice. Had they done so the appellant could have provided plenty of evidence that planning permission was not required.
3. The Council have not responded to the costs application.

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who have behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. It was patently obvious from my site visit that the works were to repair and maintain an existing track. There was clear visual evidence that the previous track had been made of hardcore laid over a plastic membrane and the appellant had plenty of written evidence from his purchase of the site and the agreement with the forestry Commission that the wood was accessed by a track laid with hardcore. There is absolutely no evidence that the private way was ever a simple mud track.
6. I can understand that at the time the notice was issued this was less obvious as the Council's photographs show how different the existing track looked after heavy rain in comparison to the brand new track that was being laid. Had the construction of the track been unlawful as the Council feared then considerable damage could have been caused to the ancient woodland so I can understand the Council's desire to act quickly. Nevertheless a temporary Stop Notice would have prevented any further work and allowed the appellant to

demonstrate the actual situation. There was no need to issue the enforcement notice until it was clear there had been a breach of development control. Had the Council investigated the matter properly they would have realised there was no need to issue an enforcement notice. Consequently, I consider the appellant was put to the unnecessary costs of an appeal.

Costs Order

7. 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 Maidstone Borough Council shall pay to Mr Chris Saunders, the costs of the appeal proceedings described in the heading of this; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

Inspector