The Planning Inspectorate

Costs Decision

Site visit made on 21 November 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 09 January 2018

Costs application in relation to Appeal Ref: APP/P0119/C/17/3180762
Land at Greystones 213 Down Road, Winterbourne Down, Bristol BS36 1AU

- 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 D Jenkins for a full award of costs against South Gloucestershire Council.
- The appeal was against an enforcement notice alleging the erection of green fencing and associated floodlights and netting.

Decision

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

Reasons

2. 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.

3. The appellant submits that the Council acted unreasonably because it failed to discuss the matter with the appellant following the Council's site visit and no opportunity to submit a retrospective planning application was afforded the appellant. The Council have failed to justify the reasons for issuing the enforcement notice in a case where planning permission should have been granted and this has resulted in the appellant incurring unnecessary costs of the appeal.

4. 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.

5. The enforcement notice was issued primarily because the Council considered that the development was contrary to a number of policies in the development plan and the National Planning Policy Framework. The appellant contends that the development is in accordance with such policies and therefore it was unreasonable for the Council to issue the notice.

6. As detailed in my appeal decision I have found that the development within the Green Belt is inappropriate development which is harmful to the character and appearance of the area and the living conditions of nearby residents. Also, I have found on the evidence before me that the comparator site as contended

by the appellant is not directly comparable with the appeal site. Moreover, I have found that the fall-back position relating to permitted development rights under Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 is not possible because the land is subject to a planning condition restricting certain permitted development rights. Also, reducing the fence to a height of 3 metres would not in any way serve the purpose for which the fence was erected – preventing balls going over the appeal site boundary.

7. The Council's submissions provided sufficient evidence to support its reasons for issuing the notice which adequately demonstrated by reference to the development plan and other material considerations why it considered the development does not accord with specific policies in the development plan. The Council's judgement was a subjective one and it was not unreasonable for them to take the view they did. I see no reason to doubt that the Council carried out adequate investigations, considered the development properly, and reached its decision to take enforcement action taking into account the planning history of the site and any other material considerations.

8. Thus, the Council did not act unreasonably in deciding to issue the enforcement notice, and it was necessary for the appellant to make an appeal. The costs incurred by the appellant in pursuing the appeal were the normal costs arising when the right of appeal is exercised.

9. 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