



Costs Decision

Hearing Held on 25 June 2019

Site visit made on 25 June 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2019

Costs application in relation to Appeal Ref: APP/P4605/C/18/3205768 Woodside Farm, Duttons Lane, Roughley, Sutton Coldfield, West Midlands B75 5RJ

- 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 Malcolm Neachell for a full award of costs against Birmingham City Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging without planning permission the construction of a new access road.
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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. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice. Unreasonable behaviour may relate to either procedural matters or substantive issues relating to the merits of the appeal. The applicant for costs considers that the Council acted unreasonably with respect to the substance of their case.
3. I have allowed the appeal and quashed the enforcement notice in my appeal decision. However, I have dismissed the appeals in relation to grounds (b) and (c). The Council reached reasonable judgements on those matters and this application therefore turns on how the Council reached its decision on the planning merits of the development. The applicant considers that the development should have been permitted and I have agreed but it does not follow that the decision to issue an enforcement notice was unreasonable.
4. I understood the Council's case with respect to their concerns regarding impact upon openness of the Green Belt. In my view the case was not straightforward or clear-cut. The Council were reasonable to take account of the effect of moving vehicles and also the surrounding enclosures. The evidence of the level of use was very limited and it is not clear what attempts have been made to monitor the site or make investigations as to the level of use. However, I could get some idea of the level of use from what I saw at my site visit, from various

documents submitted by the main parties and the discussion at the hearing. Whilst I was not convinced that the intensity of use or degree of enclosure of the track was sufficient to cause the harm that was alleged, the Council's position was unjustified and was not overly vague or generalised.

5. My decision is based upon the evidence and submissions put forward by both parties as well as what I saw at the site visit. Some of the matters were not clear cut and the site visit helped to put these into context so that I could make a judgement. It is possible for different people to reach different conclusions regarding these matters and the Council did not act irrationally with respect to these matters.
6. The Council indicated within their hearing statement that they would produce case law and did not do so. However, the concepts that were raised in relation to these matters are well rehearsed and whether or not case precedents are produced made little difference to the outcome of the case. It is also not clear that a lack of a review of the Council's position when the appeal was lodged would have altered their position.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

A Harwood

INSPECTOR