



Costs Decisions

Site visit made on 8 January 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 06 August 2019

Costs applications in relation to Appeal Refs: APP/U1430/C/17/3189174 & 3189175

Bryant's Wood, Wards Lane, Wadhurst TN5 6HP

- 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 Edward and Rebecca Coppard for a full award of costs against Rother District Council.
 - The appeal was against an enforcement notice alleging without planning permission the undertaking of large-scale engineering works creating numerous hardstanding areas and severally altering the appearance of the land.
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Decision

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

Reasons

2. The government's Planning Practice Guidance 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. Following receipt of a complaint in June 2017 the Council visited the appeal site and took photographs in July 2017. They then issued a Planning Contravention Notice (PCN) on 17 July 2017, to which a response was received on 24 July. The response included the claim that the works should be regarded as development permitted under The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The Council undertook a further site visit in early August 2017 and issued the enforcement notice in October 2017.
4. In my opinion the Council undertook a proper investigation of the original complaint, obtained evidence of the operations carried out, and sought further information from the appellants by means of the PCN. Although the appellant claims otherwise, it was not unreasonable for the Council to take the view that the operations they observed did not come within the allowances of Class E Part 6 of Schedule 2 to the GPDO, and that harm had been caused to the Ancient Woodland. Furthermore, they were entitled to take the view that it was expedient to issue the notice in order to remedy the perceived harm.
5. The enforcement notice plan covers the entire area of the appellants' holding, and to my mind correctly identifies the land to which the enforcement notice relates by reference to that plan. However, the plan does not identify the specific areas where the operations are said to have taken place. The Council

say in their rebuttal to this costs application that it was abundantly clear on site which areas of land were being referred to as these were 'widespread and numerous'. They also say 'several clearings' of recently stripped barren and level soil can be seen in a Google Earth image put in with their appeal statement. In my view the difference between 'widespread and numerous' and 'several' in itself indicates the lack of certainty that I consider is an uncorrectable defect in the notice. The images were not attached to the notice, and it was indeed difficult to distinguish areas where engineering works had been carried out from areas where there had been, for instance, compaction of the ground over time. I consider the Council were unreasonable to produce a plan that did not identify the areas where remedial works were required with a degree of precision that would enable the appellants to know what they needed to do.

6. As for the management plan submitted by the appellant in February 2018, which was intended to propose a way forward to remedy the harm identified by the Council, this was in my opinion remarkably thin on content. I understand this document was produced following a meeting between the appellants, their agent and the Council in February 2018, when it had been agreed that a scale plan would be produced showing the clearings and other site features. It would indicate what works were essential to the on-going management of the area of productive forestry land, and measures to be taken to restore cleared or re-profiled areas that were surplus to the reasonable requirements. However, the document spoke only in the most general terms about the objectives to coppice and process chestnut for fencing materials, but did not address any questions about remedial works, or the requirements of the enforcement notice. In the light of this, I do not consider the appellants' claim that the Council unreasonably failed to offer arboricultural advice on the basis of this document is supportable.
7. Overall, I consider the Council carried out a proper prior investigation before issuing the notice and were not at significant fault in taking little account of the management plan. However, I consider they were unreasonable in terms of preparation of the notice, which did not properly identify the areas or extent of remedial works required. I consider this caused the appellants to incur unnecessary or wasted expense in the appeal process, and that a full award of costs is justified.

Costs Order

8. 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 Rother District Council shall pay to Edward Coppard and Rebecca Coppard, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Rother District 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.

Stephen Brown

INSPECTOR