

Costs Decision

Site Inspection on 2 August 2019

by Graham Self MA MSc FRTPI

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

Decision date: 12 August 2019

Costs Application Relating to Appeal Ref: APP/P0119/C/18/3215435 Site at: Northwick Road, Pilning, Bristol

- 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 Michael McDonagh for a full award of costs against South Gloucestershire Council.
 - The appeal was made against an enforcement notice issued by the council which alleged a breach of planning control: "Without planning permission, erection of high (approximately 2.7m) brick/stone gate piers and brick/stone walls and the creation of a hardstanding by the spreading and imbedding into the land of imported crushed materials".
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The Application

1. The main points of the appellant's claim are, in summary:
 - The enforcement notice is clearer than a previous notice which was withdrawn because of inaccuracies, and now identifies the walls, piers and hardstanding subject to the alleged breach of planning control. However, the notice still contains inaccuracies by including parts of the development that are in line with permitted development rights.
 - Requirements (i) and (ii) could have been amended to attack only the walls and piers and hardstanding not permitted by the GPDO.
 - When the notice was issued, the council were aware that conditions (including Condition 15) of the 2017 planning permission were due to be discharged.
 - The council did not carry out adequate prior investigation and so did not realise some of the walls were subject to permitted development rights.
 - The council's approach to the GPDO was contrived. The appeal could have been avoided if the enforcement notice had only required the removal of the part of the hardstanding not permitted by the 2017 planning permission.

Assessment

2. Irrespective of the outcome of the appeal, costs may only 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. As will be apparent from my decision on the appeal, the appellant's contention that the erection of part or parts of the wall structures were permitted by the GPDO is misguided, for the reasons explained in the appeal decision. The council

could have limited the requirements of the notice only to some pieces of wall; but there was no obligation on the council to "under-enforce" in that way and no good reason to do so, since all the lengths of wall affected the openness of the site and conflicted with the aims of green belt policy.

4. Much the same applies to the appellant's arguments that the council took a contrived approach to the GPDO and failed to investigate properly. The development was carried out before all the pre-conditions on the 2017 permission had been discharged and was unlawful.
5. As regards the hardstanding, I have also pointed out in my appeal decision that Condition 15 of the 2017 planning permission only deals with slab levels (not, for example, matters such as materials). In any event the requirements of this condition were evidently not met at the time the enforcement notice was issued. Another condition covering landscaping was evidently not discharged until a long time after the enforcement notice was issued, and the council were not to know whether or when all the pre-conditions of the permission would be met, or in some cases even applied for. In these circumstances it was not unreasonable to issue the notice with the requirements relating to the unauthorised laying of hardstanding.
6. There was no obligation on the council to withdraw or amend the notice simply because of the grant of the 2017 permission, since Section 180 of the 1990 Act provides sufficient safeguard for the appellant where the 2017 planning permission *may* override the enforcement notice. I have made no finding on that matter bearing in mind that several features of the development do not appear to accord with the layout of the site as approved by the 2017 permission.
7. Taking those points into account I judge that there is no merit in the appellant's claim that the requirements of the enforcement notice should have been limited to parts of the development not permitted by the GPDO or by the 2017 permission. The notice is not inaccurate in the way suggested for the appellant. Nor was it unreasonable for enforcement action to be taken at the time the notice was issued. I conclude that the application for costs does not succeed.
8. As the council has pointed out, inspectors are empowered to initiate awards of costs irrespective of whether an application for such an award has been made. I have considered awarding costs for the council, and I have come close to making at least a partial award relating to aspects of the appellant's case which were so weak as to be unreasonable, including the flawed arguments relating to the GPDO and the appellant's costs application. On balance, in the absence of a specific claim by the council I have decided against initiating an award against the appellant, but he and his adviser should note for future reference that this is a procedural possibility.

Decision

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

G F Self

Inspector