
Costs Decision

Site visit made on 25 February 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2020

Costs applications in relation to Appeal Ref: APP/D0650/C/19/3236319 Land at Factory Lane lying to the east of Peel House Lane, Widnes

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Application A is made by Mr Ruabin Price for a partial award of costs against Halton Borough Council.
 - Application B is made by Halton Borough Council for a partial award of costs against Mr Ruabin Price.
 - The appeal was against an enforcement notice alleging the importation of material to form the creation of a hardstanding.
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Decisions

1. The applications for an award of costs are refused.

Reasons

2. The 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. Awards may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

Application A

3. With respect to the appeal on ground (b) the appellant contends that the Council has been procedurally unreasonable for two reasons. Firstly, it failed to carry out adequate investigation which resulted in the issue of an enforcement notice that was defective to such an extent that it required the removal from the site of material that was not brought on to the land as a matter of fact and, secondly, the Council admits that the notice needs to be amended at the discretion of the Inspector.
4. For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate.
5. It is clear that the Council incorrectly identified an element of the enforcement notice. However, the matter which appears to constitute the breach of planning control is accurately described and, indeed, the appellant accepts that the development that is the subject of the notice has taken place as a matter of fact. There is some confusion with reference to the requirements of the Notice.

There has been no importation of top soil, but the area of hardstanding occupies the land appears to comprise a base of building rubble and other waste, a membrane and a topping of motorway shale.

6. The notice does require the removal of material that was not brought onto the land, but that does not mean that the Council was unreasonable in serving an enforcement notice to remedy a breach that has clearly occurred. Furthermore, the notice is capable of being corrected in a way which does not cause any injustice to parties and, in particular, the appellant in this case.
7. An appeal on ground (b) is that that the breach of control alleged in the notice has not occurred as a matter of fact. Since this does not appear to be a matter of dispute, I do not consider that justification for an award of costs on the grounds of unreasonable behaviour on the part of the local planning authority has been demonstrated.
8. With respect to the appeal on ground (e) the appellant contends that the Council has behaved unreasonably by not carrying out their statutory responsibilities correctly in serving the enforcement as prescribed in section 172(2) of the 1990 Act. Secondly, the Council was made aware that there were other interested parties with a lawful interest in the land and it is reasonable to expect that the Council would make direct contact at that time to confirm that the notice had been served. It is argued that the Council's failure to contact other parties has directly resulted in the ground (e) appeal not being resolved at the earliest possible stage.
9. I do not dispute that others are materially affected by the notice and should have received a copy. However, it is clear to me that tenants have been informed of the Enforcement Notice and are fully aware of the appeal process. Indeed, one of the tenants attended the site visit. S176(5) of the Act states that if a person who was required to be served was not served, that fact may be disregarded if neither the appellant nor the person required to be served has been substantially prejudiced by the failure to serve. In this particular case no prejudice has been demonstrated by the Council's failure to serve.

Application B

10. With respect to the appeal on ground (a) the Council contends that the appellant has not submitted any form of justification for the appeal and has submitted a justification of lesser steps as part of the ground (a) appeal. The Council is of the opinion that the appellant is fully aware that the deemed application has no prospect of succeeding.
11. The appellant's case is not solely based on lesser steps but argues that planning permission should be granted for the development that has occurred. Lesser steps have been suggested but I do not consider this amounts to unreasonable behaviour on the part of the appellant. A case is made that the development is required for the long term use of the allotments and for vehicular access purposes. It is also contended that the hard surfacing would allow some dilapidated buildings to be relocated to secure their longevity.
12. Although I have concluded against the appellant and refused the deemed planning application on grounds relating to the principle of the development on this site as well as harm to the character and appearance of the area, I do not consider it unreasonable for the appellant to have advanced their appeal on

- ground (a). Nor do I consider that there was no reasonable prospect of the ground (a) appeal succeeding.
13. Under the ground (e) appeal the appellant has not set out how the Council's actions have caused harm or injury. Furthermore, the appellant has argued on s174(1) of the Act which relates to the right to appeal rather than s172 of the Act which sets out the requirements of serving an enforcement notice. As such, it is my view that the appellant has undertaken an incorrect assessment on ground (e). Notwithstanding that error, it is clear that the appellant's case is based on the Council's failure to notify all those with an interest in the land.
14. Consequently, although I find that by advancing a flawed argument the appellant has acted unreasonably, there is insufficient evidence before me that such unreasonable behaviour has resulted in unnecessary or wasted expense in the appeal process.

Conclusions

15. I therefore find that in both cases, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and the applications for an award of costs are refused.

A A Phillips

INSPECTOR