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## Costs Decision

Site visit made on 2 June 2020

**by Bhupinder Thandi BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 July 2020**

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### **Costs application in relation to Appeal Ref: APP/P1805/W/19/3241000 Dog Park, Holyoakes Lane, Bentley, Worcestershire B97 5SR**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Ms Heather Jo Bushnell for a full award of costs against Bromsgrove District Council.
  - The appeal was against the refusal of the Council to grant subject to conditions planning permission for a change of use of land from agricultural use to use as dog training/exercise park and operational development consisting of the erection of gates and fencing.
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### **Decision**

1. The application for the 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.
3. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities which includes providing information that is shown to be manifestly inaccurate or untrue; deliberately concealing relevant evidence at planning application stage or at appeal and lack of co-operation with the other party or parties.
4. I acknowledge the Council has not disclosed its findings relating to their enforcement investigations in 2016. Whilst this non-disclosure may well be a point of frustration for the appellant, it appears from the evidence before me that such information is confidential and that the Council are under no obligation to publish it.
5. I acknowledge that the 2016 investigation is an appropriate starting point. However, the determination of whether there has been a material change of use is a matter of planning judgement for the Council to come to a view on based on the individual merits of the case. They have evidently taken the view that there has been a material change in use since 2016 which led to the invitation to submit a planning application.
6. Whilst the activities taking place in 2016 were not considered so significant that they resulted in a material change of use of the land, in my view, this is very

distinct from accepting that the use is acceptable in planning terms. The way to judge whether a development is acceptable is through the planning application process. There is no compelling evidence before me to indicate that the Council failed to consider the imposition of conditions in coming to their decision. I find that the Council has not acted unreasonably by stating that they have an in-principle objection to the development as that is a matter of planning judgement.

7. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. However, the Council produced a cogent report and has substantiated its position on appeal rather than vague, generalised or inaccurate assertions. Furthermore, the reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the Bromsgrove District Plan that the development is considered to be in conflict with. As a result, it follows that I do not agree that the Council acted unreasonably in this case.
8. The appellant has referred to an application for a similar use granted planning permission in the district. From the limited information before me there is no compelling evidence to clearly indicate that the Council has been inconsistent in its decision-making process.
9. I acknowledge that the Council has failed to adhere to deadlines during the appeal process including failing to provide a copy of their questionnaire and supporting documents to the appellant, not providing their statement of case within the prescribed timeframe and not suggesting conditions in the event that the appeal was to be allowed. In my view this lack of co-operation amounts to unreasonable behaviour as set out in the PPG. However, I am satisfied that no unnecessary or wasted expense was incurred in the appeal process as a result of these actions.

### **Conclusion**

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having had regard to all other matters raised, an award of costs is not justified.

*B Thandi*

INSPECTOR