



Costs Decision

Site visit made on 25 August 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Costs application in relation to Appeal Ref: APP/P1805/C/20/3248581 Land at Tarncroft, Hewell Lane, Tardebigge Bromsgrove B60 1LL

- 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 Timothy Peter Ayling for a partial award of costs against Bromsgrove District Council.
 - The appeal was against an enforcement notice alleging without planning permission: -
 - (a) The material change of use of part of the land, shown hatched red on the Plan A ("the hatched land") from agricultural use to use as domestic garden land as part of the dwellinghouse known as 'Tarncroft' ("the unauthorised change of use"); and
 - (b) The carrying out of engineering operations on the hatched land by the creation of a track in the approximate location shown hatched blue on Plan B ("the unauthorised development") to facilitate separate vehicular and pedestrian access to Tarncroft.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. PPG paragraph 048 sets out where the handling of an enforcement notice prior to the appeal might lead to an award of costs. This states that Councils 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 either have meant there was no need to serve the notice in the first place or that would have ensured it was accurate.
4. At the site visit I requested that the parties point out to me and try to reach agreement as to where, as shown on Plan B, points 'x' and 'y' are and where the extent of the area hatched blue is on the site. I subsequently gave both parties the chance to comment on whether the area hatched blue covered all of the engineering operations described in breach (b) and whether the plan could be amended without injustice to the parties.
5. The applicant submitted the costs application after the final comments stage. However, it relates to the issues relating to the drafting of the plans that were highlighted at the site visit. Moreover, it was submitted within the response to the subsequent request for comments that I had made. As such, the application was accepted and the Council were given the chance to respond to it.

6. The applicant considers that the Council's error in drafting the plans attached to the enforcement notice represents a lack of diligence in their preparation of the enforcement notice investigation and the appeal. He also states that he has been put to additional costs replying to the consultation in relation to this matter. As a result, he wishes to make an application for partial appeal costs being the costs of submitting that reply. The Council have not provided a response to the costs application.
7. I have quashed the enforcement notice as I have found that it does not specify with sufficient clarity the steps required for compliance and the land where the breach of planning control is alleged to have taken place. As stated within my decision in relation to the appeal against the enforcement notice it became apparent at the site visit that parts of the engineering operations described in the alleged breach were outside of the area hatched blue on the plan attached to the enforcement notice. Moreover, parts of those operations are also not within the land affected by the enforcement notice, the land edged red on Plan A.
8. It is the responsibility of local planning authorities to carry out adequate investigations before taking enforcement action and to ensure the notice is correct in all respects in relation to the development that has been undertaken. It would appear that the appellant had commissioned a topographical survey to support a planning application that was submitted for the development that is before me. However, I do not have the full details of the plans and documents that were submitted in support of that application.
9. It is not apparent how or why the parts of the engineering operations that have been carried out on the land identified as The Copse have not been included within the land affected by the enforcement notice. It appears to have been a drafting error as the reasons for issuing the notice state, amongst other things, that the land forms part of a woodland. I consider that the small scale of Plan A and Plan B has contributed to the drafting error being made and making it more difficult to identify.
10. The appellant had not identified these errors with the plans even though he had commissioned a topographical survey, is clearly well acquainted with the site and its surroundings having lived at High House and Tarncroft and had highlighted other issues with the enforcement notice and plans.
11. The marked-out areas on Plan A and Plan B are not entirely accurate but I do not consider that this was due to the Council carrying out inadequate investigations. Rather it appears to be a drafting error compounded by the scale of the plans. Moreover, even though the appellant has submitted additional comments, in relation to these errors, those comments could have been submitted within his other evidence if the errors had been identified earlier.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs is refused.

D. Boffin

INSPECTOR