
Costs Decision

Site visits made on 22 and 24 April 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

**Costs application in relation to Appeal Ref: APP/A1910/C/20/3264483
Land West of Runway, Bovingdon Airfield, Chesham Road, Bovingdon
HP3 0GH**

- 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 W F Markets Ltd for a full award of costs against Dacorum Borough Council.
 - The appeal was against an enforcement notice alleging the material change of use of agricultural land to use as a car park with associated laying of hard core.
-

Decision

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

Reasons

2. The appellant contends that the enforcement notice was issued unreasonably by the Council following inadequate prior investigation. As well as the general costs guidance found in the PPG, I am referred to paragraph: 048 Reference ID: 16-048-20140306 stating that "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."
3. The general position is that costs will only be awarded where a party has behaved unreasonably putting another party to wasted expense. Therefore the central question here is whether the Council's decision to issue a notice was made unreasonably. In this I am mindful that there has been no ground (a) appeal and whether it was expedient to issue the notice has not been the subject of review. Rather the question of reasonableness is concerned with whether it reasonably appeared to the Council that a breach of planning control had arisen at all.
4. Expediency aside, a local planning authority has a discretion to issue an enforcement notice where it appears to them that there has been a breach of planning control. This does not require a high degree of certainty on the part of the Council, but a breach must be at least reasonably apparent.
5. Following the receipt of a complaint and some cursory exchanges with the appellant over the course of a week or so in late October/early November 2020, the notice was issued. Taken in the most general terms, the Council has suggested that the apparent breach has arisen in one of two ways: a

permanent change of use of the land has been made, facilitated by the laying of the hard core, or temporary uses have been made that exceed (what they say is) a 14 day limited permission conferred by the General Permitted Development Order 2015.

6. Whilst I have not agreed with the Council on either point I do not consider overall that it was an unreasonable allegation to make. It may sometimes be the case that, as appeared here to the Council, hardstanding is laid in order to facilitate a permanent change of use and not, as I have found here, primarily in order to safeguard the underlying residual use of the land. The facts of the case here appear to give reasonable scope for different views about that. Similarly on the '14 day rule' point. The Council have not actually alleged that the land is used for the purposes of holding a market, but their allegation raises an association with the market use. To suggest that the 'associated' car parking use falls within the 14 day restriction of the Order is in my view, as I have explained, erroneous, but I would not go so far as to say that it is an unreasonable position to take given the obvious functional connexion that here exists.
7. Although the period between alerting the appellant to the apparent breach and the subsequent service of the notice was remarkably short, I do not consider that this is a case where further investigation by the Council or dialogue between the parties would have been likely to have avoided the service of the notice (or of the appeal). Although the Council have made some overtures in the course of the appeal concerning amendments that might be made to the steps required by the notice, their underlying interpretation of the facts giving rise to the allegation does not appear to have changed significantly.
8. Therefore I do not consider that the Council have behaved unreasonably resulting in unnecessary expense that would warrant a costs award in this case. The application is refused.

Laura Renaudon

INSPECTOR