
Costs Decisions

Site visit made on 21 June 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 21 July 2021

**Costs application in relation to Appeal A Ref: APP/C1625/C/21/3272045
and Appeal B Ref: APP/C1625/C/21/3272046**

**Land Opposite the New Inn, Waterley Bottom, North Nibley,
Gloucestershire GL11 6EF**

- 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 Mrs Katie Howse (Appeal A) and Mr David Howse (Appeal B) for a full award of costs against Stroud District Council.
 - The appeal was against an enforcement notice alleging Without planning permission, the carrying out on agricultural land located within the Cotswold Area of Outstanding Natural Beauty (AONB), of excavations, building and engineering operations comprising the formation of a concrete ramp, large expanse of concrete slab and engineered surfaces in the proximity of the southern boundary access gate and the unauthorised erection of a building on part of the engineered surfaces. The unauthorised deposit and storage of imported waste materials on the expanded engineered flat surface to the east of the unauthorised building. The unauthorised engineered excavations have resulted in an unsupported 1.5m high vertical bank, being cut irregularly into the Cotswold AONB landscape for a length of approximately 43m.
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Decision

1. The application for an award of costs is 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.
3. The appellant submits that the Council has acted unreasonably in: issuing an invalid enforcement notice, which the appellant considers to be a nullity; failure to properly identify the alleged breaches and not properly justifying its basis for taking enforcement action; misunderstanding generally accepted principles of law or guidance; failing to address matters enforced against at appeal stage; inclusion of requirements to remove operational development which the Council should be aware is lawful; introducing new allegations at appeal stage; failure to review their position once notice of appeal was received; failure to enter into constructive discussions; failure to carry out adequate prior investigation; and making inaccurate assertions about the nature of the development, the appellants' evidence and their operations on the land unsupported by objective analysis. I deal with each of these in turn.
4. As regards the validity of the notice, I found in my appeal decision that the notice was not a nullity and that it is possible to identify the nature of the

breach with reasonable certainty from the four corners of the notice. The notice is not required to provide accompanying information in the form of plans or photographs, or to identify the precise location of the breach on the plan attached to the notice. Mistakes made by the Council in issuing incorrect covering letters in my view represent administrative errors which are not of such consequence as to amount to unreasonable behaviour, particularly in the light of the pressures resulting from the ongoing pandemic.

5. Whilst I have made some minor corrections to the notice in the interest of clarity, these were not substantive corrections and as outlined above, the notice was sufficiently clear on its face to enable the appellant to identify the alleged breaches. Evidently the appellant has not made an appeal on ground (a) and the opportunity to do so has now passed. However, the appellant was able to argue its case on grounds (b) and (c) based upon its correct assumptions as to the nature of the alleged breaches. Therefore I see no reason why the appellant could not have made an appeal on ground (a) based on these same assumptions.
6. As to the reasons for issuing the notice, these are in my view properly formulated to set out the background to the enforcement action, providing further information also in relation to the nature of the alleged breaches, along with the Council's basic position in relation to permitted development rights, and as to the planning policies and harm that render enforcement action expedient in the light of the Council's view that the alleged breaches did not represent permitted development.
7. Turning to the allegation that the Council has misunderstood generally accepted principles of law or guidance, I have not found this to be the case in my appeal decision. Indeed, I have agreed with the Council's position that the alleged breaches would not, on the evidence before me, represent permitted development. The restriction in relation to the stipulated area of land comprising the agricultural unit is derived from the terms of the secondary legislation itself. Considerations as to whether there is security of tenure in respect of the various areas of land claimed to be within the agricultural unit represents part of the assessment as to whether that land is within the agricultural unit, rather than imposing an additional limitation beyond that imposed by Parliament¹.
8. Although the Council's statement contains reference to planning policy, I do not consider that this was unreasonable in the light of there being some considerable detail provided in respect of its position as to whether or not the matters which are the subject of the notice occurred and whether they represent a breach of planning control.
9. Once again, I have found that the Council was correct in its assessment that on the available evidence, the development which is the subject of the notice did not represent permitted development and as such, it was not unreasonable for the requirements of the enforcement notice to stipulate the removal of that operational development.
10. As regards the allegation that the Council has attempted to introduce new allegations at appeal stage, my view is that the reference by the Council to equestrian use was not a separate allegation of a change of use but rather was

¹ As per *Sykes v. Secretary of State for the Environment and another* (1981)

seeking to justify its position as to why the operational development as alleged was not permitted development. With regard to the reference to the introduction of an allegation of a private way, the notice describes the allegation as the formation of the concrete ramp and the Council's evidence seeks to demonstrate why this is unauthorised, taking the view that it, along with the engineered flat surface up to the additional field gate, constitutes a private way. Again, this does not therefore represent a substantive new allegation and indeed, the Council's reasons in the notice make reference to the need for prior approval in respect of, amongst other things, a private way.

11. As to the allegation of the Council's failure to consider its position once the appeal was received, it is plain that the Council engaged with the appellant in relation to their concerns that the enforcement notice was a nullity since they provided a thorough and detailed response in relation to those concerns. The Council did not act unreasonably in refusing to engage in discussions with the aim of seeing the enforcement notice withdrawn given that it was a valid notice. Investigations carried out by the Council were adequate to inform its position that breaches of planning control had occurred and to enable it to draft a notice which provides reasonable certainty as to the nature of the breaches alleged.
12. Turning then finally to the allegation that the Council has made inaccurate assertions unsupported by objective analysis, it seems to me that the assertions alleged by the appellant are matters which fall under the planning judgement of the Council. As outlined above, the reference to the use of the part of the land for equestrian purposes was made in the context of whether or not the operational development was permitted development, rather than being a new allegation of itself. Whilst the appeal decision cited by the Council may not relate to identical circumstances to those in the present case, it was sufficiently relevant that reference to it does not represent unreasonable behaviour.
13. For the above reasons and taking into account all other matters raised, I find that the Council has not acted unreasonably. Thus there is no need to consider the matter of wasted expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

V Bond
INSPECTOR