



Costs Decisions

Site visit made on 8 November 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 16 November 2022

Costs applications in relation to Appeal A: Ref APP/C1435/C/21/3287244 and Appeal B: Ref APP/C1435/C/21/3287246

Land at Little Marklye, Marklye Lane, Heathfield, East Sussex shown edged red on the plan attached to the notice ("the Land")

- 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).
- The applications are made by Mr John Bushnell (Deceased) in respect of Appeal A and Mrs Sarah Bushnell in respect of Appeal B for a full award of costs against Wealden District Council.
- The appeals were against an enforcement notice alleging without planning permission, the importation of materials to form an elevated bank ("the Bank") and the erection on the elevated bank of a fence in excess of 2 metres in height from the original ground level ("the Fence"), in the approximate position shown coloured green on the plan attached to the notice.

Decisions

1. The applications for awards of costs are allowed in the terms set out below.

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. The PPG is explicit 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 accurate¹.
4. It seems to me, including from a consideration of its Enforcement Report (ER)², that the Council did not adequately investigate the alleged breach of planning control before issuing the enforcement notice - which I have now quashed due finding in the appeals that the matters stated have not in fact occurred.
5. In particular, the ER sheds insufficient light on how the Council came to an evidenced view that there had been a "material increase in height to the ground levels" alongside the boundary with Old Marklye Cottage. In its rebuttal against the costs applications, the Council refers to measurements having been made. But I find this an unsatisfactory answer because (a) the details of any such measurements were not entered into the appeals; and (b) the obvious

¹ Paragraph: 048 Reference ID: 16-048-20140306

² Report to take Enforcement Action under Delegated Powers (signed by Team Leader on 15 September 2021)

difficulties of ascertaining what the original ground levels were by taking measurements post-development.

6. Further, the photographic evidence contained within the ER³ (and re-produced within the Council's appeal submissions) in fact provided conflicting evidence against the assertion that ground levels had been raised along the boundary. This evidence is dealt with in my Decisions on the appeals, leading to the notice being quashed.
7. In my view, the notice should never have been issued on the above basis. A reasonable level of investigation and consideration of the facts would have obviated the need for formal enforcement action. Further, there is a great deal of evidence that the appellants and their agent attempted to prevent such action through the sharing of information they held about the land and its pre-development condition. Yet they were forced to make appeals, and incur unnecessary expenses, when they were unsuccessful in their significant attempts to persuade the Council not to issue the subsequently quashed notice.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified in respect to both applications.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wealden District Council shall pay to Mr John Bushnell (Deceased) in respect of Appeal A and Mrs Sarah Bushnell in respect of Appeal B the costs of the appeal proceedings described in the heading of these decisions; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicants' agent is now invited to submit to Wealden District Council, to whom a copy of these decisions has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR

³ Photo 1