



Costs Decision

Site visit made on 31 January 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2023

Costs application in relation to Appeal Ref: APP/Y3615/C/22/3300655 Land known as land to the rear of 120 – 130 Potters Lane, Send, Woking, GU23 7AL

- 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 Guildford Borough Council for a full award of costs against Mr Kevin Watts.
 - The appeal was against an enforcement notice alleging, without planning permission, the carrying out of operational development consisting of an engineering or other operation to construct a tarmac access/crossover, the installation of drainage and the laying of hardcore material to create a hard surface/track and the carrying out of operational development to partially construct steel and brick posts/piers.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal¹.
3. The appeal was originally made on ground (a) only. On 8 June 2022 the Planning Inspectorate wrote to the Council confirming the appeal to be valid and exempt from payment of the ground (a) fee due to the related planning appeal against the refusal of a retrospective planning application for the access (Appeal B reference APP/Y3615/W/22/3297665). The Council responded on 14 June 2022 to explain that the enforcement notice relates to the same access point but also to an additional area of hard surfacing/ track behind the access and associated drainage which did not appear to be covered by the aforementioned appeal.
4. The appellant was copied in on that explanation and responded to all on 15 June 2022 that the additional area of hard surfacing/ track behind the access and associated drainage complies with Class B(e) of Part 6 of Schedule 2 of the GPDO². The Inspectorate queried³ whether that amounted to a ground (c) appeal. At the same time it confirmed that payment of the ground (a) fee was payable to the Council by no later than 28 June 2022.

¹ Paragraph: 053 Reference ID: 16-053-20140306

² The Town and Country Planning (General Permitted Development) (England) Order 2015

³ On 16 June 2022

5. The Council confirmed on that date that a fee had not been received and sought confirmation as to whether the appeal was proceeding and, if so, on what grounds. The Planning Inspectorate wrote to the parties on 28 June 2022 explaining that it was decided to extend the fee deadline and confirmation of the ground (c) appeal to 01 July 2022.
6. On 1 July 2022 the appellant wrote to the Planning Inspectorate stating that he had not received an answer from the Council as to how the fee was calculated and requested a further extension until clarification was received. An extension was granted until 8 July 2022. On that date, the Inspectorate extended the deadline to 11 July 2022. The appellant subsequently confirmed on the same date that he had been unable to reach agreement on the fee with the Council but confirmed that an appeal under ground (c) would be pursued.
7. To that end the appellant did provide reasons why he considered the development to be permitted by the GPDO. Whilst I have found that the appellant has not demonstrated that to be the case, to the required standard of proof, it was not unreasonable to make the argument and exercise his right of appeal on that basis. The ground (c) submission was also made within the time limits agreed by the Planning Inspectorate, and the Council was aware at all stages that the ground (a) appeal might not proceed so there was no abortive costs in that regard.
8. In response to the costs application the appellant has suggested it is the Council who has acted unreasonably by issuing an enforcement notice after the appeal had been lodged under s78 of the 1990 Act against the refusal of an application for the access. Nevertheless, no formal cost application has been made and the Council has provided its reasons why it considered it expedient to issue a notice, taking into account the provisions of the development plan and other material considerations. I am also aware of the significant public interest in this case.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Richard S Jones

INSPECTOR