



Costs Decision

Site visit made on 14 June 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st July 2023

Costs application in relation to Appeal Ref: APP/A1910/C/22/3302653 Land at 1 The Orchard, Kings Langley, Hertfordshire WD4 8JR

- 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 Benjamin Sterling (Kedgling Developments Ltd) for a full award of costs against Dacorum Borough Council.
 - The appeal was against an enforcement notice alleging the erection of a fence.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 applicant submits that the Council behaved unreasonably by taking enforcement action and issuing the notice one or two weeks earlier than expected. The applicant has also detailed numbers of cases within the borough relating to enforcement notices issued, retrospective planning permission granted, resolution of breaches and expediency not to enforce for matters concerning fences. They consider that with the rarity of issued notices, the temporary nature of their fence and the fact that the fence was to be screened with Heras style fencing, action was 'unjustified and bizarre'.
4. The Council confirmed in a letter dated 8 December 2021 to the applicant that the fence should be removed, or an application submitted. The applicant was given 28 days to respond. This complies with the Council's Local Enforcement Plan (LEP). Further email correspondence dated 5 January 2022 between the parties confirmed the Council's stance and again provided a deadline of 28 days after which time enforcement action would be taken. The applicant was therefore aware that an enforcement notice could be issued from early February 2022, having been given 28 days in which to apply for planning permission or to remove the hurdle style fence.
5. The planning enforcement investigating officer's report on the expediency of taking formal action, dated 28 January 2022, outlines the breach and attempted resolution. It states that following non-compliance with the Council's requests, enforcement action was considered necessary because of the harm caused by the development in terms of its adverse effect upon the character and appearance of the surrounding area. The notice was subsequently issued on 5 July 2022. While it may have been better practice to issue the notice in a

timelier manner, the Council's LEP provides no guidance on the period within which a notice should be issued.

6. From the evidence before me, the applicant was fully aware that enforcement action was proceeding and that a notice would be issued at some point from the end of the 28-day period referred to by the Council in their correspondence dated 5 January 2022. Whether or not it was ultimately issued one or two weeks before expected by the applicant seems to me to make little difference to any outcome. The applicant had sufficient opportunities to apply for a certificate of lawfulness, apply for planning permission or remove the fence but they had not.
7. Notwithstanding this, an appeal against the enforcement notice has allowed the applicant the opportunity to bring an appeal against grounds that the development does not constitute a breach of planning control. They also had the opportunity to appeal against grounds that planning permission ought to be granted, although this ground was not pursued.
8. The power to issue an enforcement notice is discretionary. An enforcement notice should only be issued where the local planning authority is satisfied that it appears to them that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations¹.
9. The Council acknowledges a high proportion of alleged breaches of planning control are investigated and then closed, for reasons that enforcement action would not be expedient to pursue. Nevertheless, the Council clearly deemed the appeal fence harmful in its context and contrary to the National Planning Policy Framework and development plan policies with reasons set out within the notice. This course of action meets with the guidance contained within the Council's Local Enforcement Plan (LEP) and the PPG².
10. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified for the appeal.

S A Hanson

INSPECTOR

¹ Section 172(1) of the Town and Country Planning Act 1990

² PPG Paragraph: 018 Reference ID: 17b-018-20140306