



Costs Decision

Site visit made on 9 October 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 13th November 2023

Costs application in relation to Appeal Ref: APP/J0405/C/22/3299701 Land adjacent to Vicarage Cottage, Mentmore, Buckinghamshire

- 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 Ms Elizabeth Hough for a full award of costs against Buckinghamshire Council.
 - The appeal was against an enforcement notice alleging the unauthorised construction of an access track and area of hardstanding.
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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. In this instance, the applicant contends that the Council's behaviour has been unreasonable both procedurally, and substantively.
3. Procedurally, the applicant argues that the Council should not have proceeded with formal enforcement action following investigation of the alleged breach of planning control. This is on the basis that the development should have benefited from permitted development rights, which would mean there had been no breach in the first place. However, as I have agreed with the Council's conclusion that the development would not benefit from permitted development rights, it follows that their conclusions were not unreasonable in this regard.
4. In turn, a breach of planning control had been committed, and it was reasonable for the Council to issue an enforcement notice to protect its position. This is entirely common, even where a retrospective planning application for the development is to be submitted, as there is no guarantee that such an application would be successful. The Council was also explicit that any dialogue regarding the acceptability of surfacing materials did not mean planning permission was not required for the works.
5. The applicant further alleges that each of the Council's substantive reasons for issuing the enforcement were unreasonable. The first two of these reasons related to the impact of the development on the landscape character of the area, including the choice of materials used in the development.

6. The context of the appeal site is important in this instance, as it is within a conservation area and an Area of Attractive Landscape. Its location is therefore particularly sensitive. Although I have sided with the applicant with regard to these issues, it was not unreasonable for the Council to reach a different conclusion. Indeed, the track does appear more extensive than the track previously in situ, which means its impact could be perceived differently. Moreover, given the sensitive location and significant width of the track, the Council was entitled to be cautious in terms of materials, even if such materials had been found to be acceptable elsewhere.
7. The Council's third reason for issuing the notice related to the protection of ridge and furrow features of the land to the north of the appeal site. Whilst I have again sided with the applicant on this issue, the track is undoubtedly very different in character to the informal track previously in situ. It was therefore not unreasonable for the Council to theorise that use of the track could increase as a result. This reason was intrinsically linked to the protection of a feature of historical importance, rather than anticipating a future breach of planning control.
8. The Council's final reason for issuing the enforcement notice related to the protection of species. The enforcement notice pre-dated the applicant's ecological assessment, and prior to receipt of this information, it would have been reasonable for the Council to consider the development a potential risk to certain species. Indeed, the site is located near to ponds, and is also abundant with vegetation. Without evidence to demonstrate otherwise, the presence of such species would therefore have been a legitimate concern.
9. For the reasons outlined, and notwithstanding the outcome of the appeal, I do not consider that the Council's substantive reasons for issuing the enforcement were unreasonable. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

James Blackwell

INSPECTOR