
Costs Decision

Inquiry held on 2 August and 14 September 2016

Site visit made on 3 August 2016

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 September 2016

Costs application in relation to Appeal Refs: APP/L1765/C/15/3140487 and APP/L1765/C/15/3140488

Boarhunt Garage Ltd, Southwick Road, North Boarhunt, PO17 6JW

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Winchester City Council for a partial award of costs against Mr Jason Chambers and Mrs Debbie Chambers.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a material change of use of land as a highway maintenance contractor's yard, the siting of shipping containers and the storage of bricks.
 - **Summary of Decision: application succeeds and partial costs awarded.**
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1. The costs application was made at the inquiry and submitted in writing.
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.

The submissions for the Council

3. The appellants' conduct was unreasonable in introducing late evidence and resurrecting the ground (d) appeal at the outset of the inquiry giving the Council no opportunity to consider it in advance. Some 1.5 hours of inquiry time was lost, otherwise the inquiry could have been concluded in one day.
4. The ground (d) appeal should not have been made, was withdrawn and then resurrected. The burden of proof was with the appellants and no evidence was adduced to show that the use had continued prior to the notice and there was a failure to consider the planning history in respect of 1997 when a new chapter arose. There has been no evidence to support the claim of there being two dwellings on the site.
5. In respect of the ground (c) appeal, this was misconceived and unreasonable. There was no dispute that there were vehicles on site and the ground (b) appeal was unreasonably pursued on the basis of semantics. In the ground (a) appeal the appellant has failed to address Policy CP6 and there is no evidence that a realistic fallback position existed.

The response by Mr Jason Chambers and Mrs Debbie Chambers

6. It is accepted that new evidence was submitted but this provided the baseline for the appeal. The Council was not caught by surprise with the re-introduction
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of the ground (d) appeal. This had been referred to in earlier documents. The matters to be raised in ground (d) needed to be considered in the ground (c) appeal which was the approach adopted in the original inspector's communication. Prior to the inquiry the Council accepted that a one day inquiry would be tight and two days would be needed.

7. The test for new evidence is a high one. It was not concealed or withheld and did not result from the appellants' personal conduct. It was provided by a third party at a late stage and provides objective evidence. It was not unreasonable to pursue a ground (b) appeal as the notice should be clear on its face.

Reasons

8. Paragraph 16-053 of the Guidance indicates that the introduction of fresh and substantial evidence at a late stage necessitating an adjournment, or the prolonging of proceedings by the introduction of a new ground of appeal, are types of behaviour that may give rise to a procedural award against an appellant.
9. The appellants' advocate indicated that the documents came to attention a week before the inquiry but no explanation was provided why it was not made available to the Council or to local residents prior to the inquiry. It was introduced on the morning of the inquiry and this led to a short adjournment and, not unexpectedly, led to concern by the third parties and the Council in respect of being able to respond adequately to its content. The bundle was muddled in parts which wasted additional time. I agree with the Council that this led to an additional 1.5 hours or so to the proceedings. Whether an adjournment to a second day could have been avoided is unknown as timing was always going to be tight. Nevertheless this could possibly have been achieved, particularly had the sitting been extended beyond the actual finishing time of 5.17pm, as I had been prepared to do, although the availability of the parties much beyond that time is uncertain.
10. The tightness of the timings was recognised by the parties before the inquiry. The Council had pointed out that the appellants' agent, Mr Neame, would be giving planning evidence (although earlier indications suggested the contrary); it appeared that the evidence of the appellant, Mr Chambers, and his witness, Mr Doney, would be more substantial than the brief statutory declarations which implied an intention to adduce more evidence; and ground (d) was to be re-introduced.
11. Whilst I recognise the importance of the late evidence to the appellants' case, its relevance to both the ground (c) and (d) appeals and the fact that it came to light late in the day, it does not justify its late introduction in the context of the costs regime. Nor is the re-introduction of ground (d) reasonable when it had clearly been withdrawn at a much earlier stage in the appeal proceedings. This behaviour has led the Council to incur additional costs that otherwise would have been unnecessary either before the inquiry when ground (d) was originally withdrawn or through responding to the ground (d) matters when it was re-introduced.
12. The appellants also withdrew their appeal on ground (g) at the inquiry. Although this would only have led to a minimum degree of wasted expense by

the Council, the fact is that the appellants should not have pursued grounds of appeal that they subsequently chose not to argue at the inquiry.

13. The Council also considers the appellants to have acted unreasonably in respect of grounds (c), (b) and (a). However, I disagree. Whilst I have not been persuaded by the appellants arguments in the ground (c) appeal, the arguments were nevertheless relevant to the case. In ground (b), whilst criticism of semantics may arise, it is necessary to ensure that the notice is correct on its face. In the ground (a) appeal, I am satisfied that the appellant put forward proper planning arguments, even though I have not been persuaded by them in terms of the planning merits of the development.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

15. 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 Mr Jason Chambers and Mrs Debbie Chambers shall pay to the Winchester City Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of responding to the ground (d) and (g) appeals and to the introduction of late evidence.
16. The applicant is now invited to submit to Mr Jason Chambers and Mrs Debbie Chambers to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

P N Jarratt

Inspector