The Planning Inspectorate

Costs Decision

Site visit made on 18 January 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 31 January 2017

Costs application in relation to Appeal Refs: APP/D0121/C/16/3155197, 3155198, 3155199, 3155200 and 3155201
Land north of Newditch Farm, Potters Hill, Felton, Bristol BS40 9XB

- 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 North Somerset Council for a full, or in the alternative a partial, award of costs against Mr Chris Williams, Mr Christopher Vowles, Mr Antony Gibbs, Mrs V Gibbs and Trustee Barrow Trust.
- The appeals were made against the decision of the Council to issue an enforcement notice that alleged: without planning permission, the change of use of the land from agriculture to a mixed use of agriculture and the parking of vehicles unconnected with the agricultural use of the land.

Formal Decision and Costs Order

1. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, IT IS HEREBY ORDERED that Mr Chris Williams, Mr Christopher Vowles, Mr Antony Gibbs, Mrs V Gibbs and Trustee Barrow Trust shall pay to North Somerset Council, the costs of the appeal proceedings described in the heading of this decision, but limited to the submission of the Appellants' final comments and, in particular, responding thereto; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned appeals more particularly described in the heading of this decision.
2. The Applicant is now invited to submit to Mr Chris Williams, Mr Christopher Vowles, Mr Antony Gibbs, Mrs V Gibbs and Trustee Barrow Trust, to whom a copy of this decision has been sent, the 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 Court Costs Office is attached.

The case for both parties

3. The case for both parties is set out in writing and since there is a public record of those submissions I do not propose to rehearse them here.

Reasons

4. 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 full application for costs

5. Dealing initially with the full application for costs, the Council has referred to 2 examples of the type of behaviour that might give rise to a substantive

award against Appellants, as set out in paragraph ID 16-053-20140306 of the Planning Practice Guidance. I propose to assess the appeal against each example, in turn.

6. Dealing with the first I consider this is a case in which the development is clearly not in accordance with the Development Plan [DP] and the National Planning Policy Framework ["the Framework"]. However the Appellants have referred to a number of material considerations, including the Council's decision to grant planning permission for a very large car park on Green Belt land at the airport. Although I have given reasons in my main decision for distinguishing these material considerations and finding that there are no considerations that clearly outweigh the harm by reason of inappropriateness, the other identified harm and the policy conflict, I consider that it was not unreasonable to bring the ground (a) and make the case that there were very special circumstances.

7. Turning to the second, as I have noted in my main decision, the Council has not provided any appeal decisions relating to car parking in the Green Belt. At paragraph 26 of its statement it asserts, without evidence, that there has been a significant number of appeals related to unauthorised airport parking in close proximity to the airport over a prolonged period and that all of them have been dismissed. However paragraph 6 of the Council's final comments suggest that the position is in fact much more nuanced and that, for example, 19 out of the 31 appeals against enforcement notices have been dismissed but that 2 notices have been quashed. The Council's final comments on the costs application concede: "*In hindsight the Council has omitted the relevant appeal decision which would make the evidence much clearer*". Amongst other things it is common ground that there is no planning history[1] on the appeal site itself.

8. In the circumstances the Council has not shown that this case falls within the second example. There is no evidence that the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site, where an Inspector decided that the development was unacceptable and circumstances have not materially changed. From my perspective, noting again that it is not my role to go searching for comparable appeals, there is no evidence that the Appellants or their Agents were aware of recent appeal decisions that are germane to these particular appeals.

9. In reaching this view I consider that the Council has not shown that the Appellant[2]: "…*understands that this appeal has no reasonable prospect of success*", as claimed. Clearance of the site following the issue of a PCN cannot be equated to having no reasonable prospect of success at appeal stage. The letter dated 1 September 2016 demonstrates that the car parking operator has operated from another site in the area, allegedly in breach of an extant notice, but there is no suggestion that there was an appeal against that notice. In the absence of an Article 4 direction the operator can use open land for 28 days, but whilst any use beyond that period might represent a breach of planning control it cannot be equated to unreasonable behaviour. Similarly financial gain arising from operating whilst an appeal is heard is not a basis to find that lodging the appeal was unreasonable.

10. For these reasons I find no basis to conclude that there has been unreasonable behaviour in lodging the appeal and, in particular, pursuing the ground (a). In the circumstances the application for a full award of costs must fail.

[1] Apart from issue of the PCN and correspondence leading up to the issue of the notice the subject of this appeal.
[2] The costs application refers to Appellant, in the singular, but there are in fact 5 Appellants in this case.

The partial application for costs

11. Turning to the application for a partial award, this is made on the basis that the Appellants submitted new evidence in response to the Council’s statement. The Council regard this to be unreasonable behaviour which, it is claimed, resulted in additional expense.

12. The Planning Inspectorate’s [PINS] start date letter of 11 August 2016 to the Appellants’ Agent set out the timetable for the submission of a statement by 22 September 2016 and final comments by 13 October 2016. The letter says that: “*You must not send your final comments instead of, or to add to, your statement. <u>No new evidence is allowed</u> at this stage*” [<u>my emphasis</u>].

13. The document labelled “*Appeal Statement*” appears to have been submitted with the appeal form, which was received by PINS on 26 July 2016. No further statement was received from the Appellants by 22 September 2016. That in itself is unremarkable and given the comprehensive nature of the Appellants’ statement it is perhaps understandable. The letter from PINS to the Agent, dated 7 October 2016, enclosed a copy of the Council’s statement and invited comments upon it by 28 October 2016. Plainly by reference to the start date letter the timetable had slipped for whatever reason. However the letter again made clear: “*<u>You cannot introduce new material or put forward arguments that should have been included in your earlier statement</u>. If you do, your comments will not be accepted and will be returned to you*” [<u>my emphasis</u>].

14. The Appellants’ final comments were received by PINS on 17 October 2016, in accordance with the revised timetable. PINS took no issue with the date of their submission, but in its letter dated 30 November 2016 the comments were returned on the basis that: “*We consider your final comments include either new material or arguments that should have been sent as part of a 6 week statement*”. In my view that judgement was correct. As I have noted in my main decision all 6 of the appendices to the final comments pre date 22 September 2016, which was the date given in the start date letter for submission of a statement. If the Council’s decision to, at that stage, resolve to grant planning permission for a car park in the Green Belt was to be relied upon then it should have been submitted as part of the Appellants’ statement.

15. I do not accept that the need to submit what is plainly new material, including the planning statement for the multi-storey car park, which was proposed on the inset, and the Committee reports, arose from the Council’s statement. If the Appellants regarded the resolution to grant, which I recognise post-dates submission of the appeal, as an important material consideration then they should have made that argument, and put forward the evidence to support it, by the deadline by which statements had to be made. Since this forms the substance of the final comments, they plainly contradict the advice from PINS, as set out in the above quotes, and missed the deadline for the statement.

16. The Planning Practice Guidance says Appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Paragraph reference ID: 16-052-20140306 gives examples of unreasonable behaviour to include: (i) delay in providing information or other failure to adhere to deadlines[3]; and, (ii) introducing fresh and substantial evidence at a late stage necessitating extra expense for work that would not otherwise have

[3] For the avoidance of doubt the deadline that I have in mind here is that for the submission of a statement by 22 September 2016.

arisen. Although I regard the compromise that PINS eventually arrived at, of accepting the final comments and allowing the Council an opportunity to comment, to be fair in the circumstances, this does not alter my view that the Appellants’ final comments fall squarely within these examples of unreasonable behaviour. As a direct result the Council were put to additional expense in having to review its terms and respond to the fresh arguments and material. For these reasons it would be appropriate to make a partial award of costs.

Conclusion

17. For the reasons identified above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. Notwithstanding my conclusion in respect of the full application, it is therefore appropriate to make a partial award of costs as set out in the formal decision and costs order.

Pete Drew

INSPECTOR