The Planning Inspectorate

Costs Decision

Site visit made on 10 January 2017

by Chris Preston BA(Hons) BPl MRTPI

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

Decision date: 11 April 2017

Costs application in relation to Appeals Referenced:
Appeal A: APP/Q9495/C/16/3149120
Appeal B: APP/Q9495/C/16/3149121
Appeal C: APP/Q9495/X/16/3148383
Deers Leap, Millside, Witherslack, Grange over Sands, Cumbria LA11 6SG

- The application is made under the Town and Country Planning Act 1990, sections 174, 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the Lake District National Park Authority for a partial award of costs against Mr Ian Parker and Mrs Tina Taylor-Parker.
- Appeals A and B were against an enforcement notice alleging: Without planning permission, material change of use of land for siting a twin unit caravan used for residential purposes; and Appeal C was against the refusal of an application for a certificate of lawful use for the use of a caravan as a permanent dwelling (including associated land)

Decision

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

Procedural Matter

2. The application for costs relates to three appeals; two of which were submitted against the service of an enforcement notice and one against the refusal of an application for a certificate of lawful use (CLU), as set out in the banner heading above. The grounds of appeal were identical in relation to the two enforcement notice appeals and the issues were closely related to the CLU appeal. Consequently, my decisions in relation to all three appeals were set out within a single letter.

3. Although the costs application relates to the conduct of the appellant in relation to three appeals, the reasons for making the application apply equally to all three and, in effect, the application was made as a single costs application. Accordingly, I have treated it as a single costs application.

The Case for the Council and the Appellant's Response

4. The application and the response were submitted in writing and, as the parties will be familiar with those submissions, the following is a brief outline of the respective cases.

The Application

5. The Council's application is for a partial award of costs made in relation to additional work and expense resulting from the submission of additional

evidence by the appellant on the day immediately prior to the site visit. The additional information could have been submitted much earlier, either during the application process in relation to the CLU application or as part of the appeal statement at the time that the appeal was made.

6. This unreasonableness is compounded by the timing, in that the Appellant's Agent would have received the Authority's Proof on 13 December, when he wrote to the Inspectorate also on 13 December requesting that the procedure be changed. He would have known that he was seeking to respond to the receipt of the Authority's Proof when he wrote to the Inspectorate on 03 January 2017 to accept written representations as the means by which the appeal would be determined, and yet he did not advise the Inspectorate that he was likely to submit further comments.

7. To date this unreasonable behaviour has required the Authority's case Planner to seek copies of the information from the Agent, to review it, seek advice from his Team Leader and South Lakeland District Council and prepare a response. In doing so we have also taken further advice from Counsel previously engaged, all of which has led to additional expense.

The Appellants' Response

8. The LDNPA Proof of Evidence introduced a document by way of an email dated 8 December 2016 from SLDC Council Tax section stating the existence of a 'file note' purporting to be an account of a telephone conversation, which the same Council Tax section had confirmed in writing in March 2016 did not exist. Ordinarily in cases where Proofs of Evidence are produced, there would have been the subsequent opportunity at the Inquiry for the appellant to cross examine the LDNPA witness. However, in this particular case, the change in procedure removed the opportunity to cross examine the witness and no discussion could take place at the Inspector's site visit.

9. Consequently the only opportunity left for the appellants was to submit a rebuttal statement and give the LDNPA fair opportunity to respond. Had the rebuttal statement not been submitted, it would have resulted in the LDNPA submitting evidence without the opportunity to challenge that evidence, and this would have disadvantaged the appellant. Therefore, no unreasonable behaviour has occurred.

10. It was entirely reasonable on receipt of the LDNPA's proof to seek clarification as to why the SLDC email of 8 Dec 2016 differed to the SLDC written response of March 2016. This resulted in the meeting between the appellant's agent and the SLDC Council Tax Section with SLDC providing extracts of 'diary notes'/'action log' and its report to the Valuation Office.

11. The information provided by SLDC Council Tax Section on 29 December 2016 to the appellant's agent is very relevant, and material to the case, as it contradicts the email in Appendix I of Mr Long's proof which was only made available to the appellant' agent on 13 December 2016. The LDNPA state at para 7 of its claim for costs, that the information contained in the rebuttal statement ought to have been included in the appellant's appeal statement, but as set out above this was totally impossible given that the new evidence (Appendix I) was only provided by the LDNPA in December 2016.

12. The LDNPA suggest that Appendix I is not new evidence but simply a repeat of evidence submitted in its appeal statement but if that was the case, then Appendix I would have been included in the LDNPA Appeal Statement but it wasn't because the email wasn't written until 8 December 2016 some 6 months after the LDNPA Appeal Statement was submitted. In simple terms, the appellant couldn't comment on something 6 months before it was written, and it is perverse for the LDNPA to claim the rebuttal statement information should have been included in the appellant's appeal statement for that reason.

13. Overall, there has not been the submission of unrelated late evidence as purported by the LDNPA but a rebuttal statement in direct response to new evidence provided by the LDNPA. The rebuttal statement is simply that and is not late evidence as alleged. It was provided in a timely manner taking account of the Christmas period. There has not been any unreasonable behaviour by the appellant and in the absence of any unreasonable behaviour no incurring of unnecessary costs has occurred because there was no alternative means to response to it due to the change in appeal procedure.

Reasons

14. The Planning Practice Guidance (March 2014) (the PPG) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 052 of the PPG sets out a non-exhaustive list of the types of behaviour that may lead to an award of costs against an appellant on procedural grounds. Those examples include situations where there is a delay in providing information or other failure to adhere to deadlines or where fresh and substantial evidence is introduced at a late stage necessitating extra expense that would not otherwise have arisen.

15. All parties involved in appeal proceedings are expected to adhere to the specified timescales for the submission of information. There is no formal allowance within those timescales for the submission of rebuttal proofs. Nonetheless, on occasion, situations arise where a party will seek to submit additional information outside of the normal timescales. That requires a delicate decision on the part of the Inspector as to whether to accept the late information, including an assessment of the relevance of the information, an understanding of why it was not submitted in line with agreed timetables, and consideration of whether the submission would cause prejudice to any interested party.

16. In this case, the principal reason for the submission of the extra information on the part of the appellants was to clarify the position with regard to Council Tax records. Mr Long for the Council had referred to a record of a conversation held by the Council Tax department in Appendix I of his proof. Mr Coates, the appellants' agent, had previously received a letter to confirm that no such records existed. The suggested reason given by the taxation officer was that a search had been undertaken on the record for Deer's Leap instead of Black Bull Barn. Whatever the reason, the issue was clearly relevant to the appeals and the appellants had every reason for wishing to clarify matters. Mr Coates produced a photocopy of the log kept by the Council Tax section with the additional information. I agree that they would have been prejudiced if the information had not been accepted.

17. The submission of the information undoubtedly led to further work on the part of the Council. However, given that the information was directly relevant to the appeals, I cannot conclude that work was unnecessarily incurred. It covered matters that needed to be addressed.

18. The appellants had received the Council's proof of evidence on 08 December and had confirmed on 03 January that they were happy that the appeal could proceed by the written method with no mention of their desire to submit further information. It was frustrating to find that further information was then submitted six days later on the day before the scheduled site visit on 09 January 2017. I had left home to travel to the vicinity of the site and did not receive an email asking for my views on whether the information should be accepted until I returned home after the visit. That then led to a need for consultation with the Council and consideration of whether the appeal could still proceed by the written method.

19. However, I am mindful that the course of events unfolded over the Christmas and new-year period when people are more likely to be away from work and response times may reasonably be expected to be greater. Whilst the issue of Council Tax records had been raised previously the specific records referred to in Appendix I of Mr Long's proof were not available to the appellants at that point in time. Mr Coates clearly had to undertake additional work to get to the bottom of the issue and to ascertain why he had previously been told that no verbal records existed. Having regard to that point and the relevant time of year I am satisfied that the information was not delayed unreasonably, even if the timing of the submission was less than ideal.

20. Consequently, the submission of the rebuttal was necessary and the timing of the submission was not delayed beyond what could reasonably be expected. Accordingly, I find that the appellants' actions were not unreasonable. In the absence of any unreasonable behaviour there are no grounds for an award of costs and I shall refuse the application.

Chris Preston

INSPECTOR