
Costs Decisions

Hearing held on 3 May 2017

Site visit made on 3 May 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 11 May 2017

Costs applications in relation to Appeal Ref: APP/Y9507/C/16/3154735 J & J Nurseries, Station Road, Soberton, Southampton, Hampshire SO32 3QU

- 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 J A Kopinski for a partial or full award of costs against Winchester City Council on behalf of South Downs National Park Authority.
 - The hearing was in connection with an appeal against an enforcement notice alleging a change of use to agriculture and residential use
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Summary of Decisions

1. The applications for a full award and the application for a partial award (No.1) fail. The application for a partial award (No.2) succeeds in part.

Background and procedural matter

2. The National Planning Practice Guidance (NPPG) 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. Prior to the Hearing the Council conceded that the drafting of the enforcement Notice was defective and that a request would be made to correct the allegation. This approach was agreed by the appellant.
4. The applications were made in writing, and are summarised below.

The submissions for Mr J A Kopinski

5. The applications were for a full award and in the alternative 2 partial applications.

Application for a Full Award

6. The Notice should not have been issued because it was clear that the family had lived and made a living in agriculture from the site since 2005/6.
 7. The applicant should have been invited to submit an application and to explain the need for his occupancy. In the absence of this there was no consideration of the merits of his occupation or of Policy CE 19.
 8. The Council did not correctly analyse the situation on site and did not have proper regard to the appeal decision in 2009. Consequently it did not consider
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if the structure on the site amounted to operational development which was immune from action.

9. The Notice as issued was seriously flawed.

Application for a Partial Award (No.1)

10. The information provided in the agricultural appraisal during the appeal demonstrated that residential occupation was justified and in the light of this it should have led to an agreement that planning permission could be granted.

Application for a Partial Award (No.2)

11. The Notice as drafted was seriously flawed and pre-Hearing discussions have led to considerable correspondence. Whilst this is helpful it does not go far enough. The Council should have accepted the applicant's submissions about operational development and in the light of relevant case law should have withdrawn the Notice.

The response by Winchester City Council on behalf of South Downs National Park Authority

12. The Council contacted the applicant after the 2010 permission lapsed and invited him to make an application. However, although he said he would make an application, nothing was submitted.
13. Subsequently 2 Planning Contravention Notices were served but despite this no application was forthcoming. In this context and in the light of the ongoing breach the Council had no option other than to issue an Enforcement Notice.
14. The Council accepts that the Notice was flawed but it is capable of correction in the way that has been proposed.

Reasons

15. The site has a complicated planning history and there is no doubt that the structure brought onto the site was not that permitted in 2005 and was unauthorised. This was confirmed at the appeal in 2009. Although I have found in the appeal decision that this structure now amounts to operational development there was an arguable case for alleging a material change of use had occurred. Thus it was not unreasonable for the Council to argue that the development was a mobile home and hence a use of land.
16. The applicant appears to have been advised on a number of occasions to put in an application supported by accounts and an agricultural appraisal. He did not do so and, although the reasons for his inaction may be understandable, he could not have been under any illusion that his occupation was unauthorised if only because he would have been aware that the 2010 permission expired in 2011. In the absence of any application and the continuing breach it was therefore not unreasonable for the Council to take enforcement action. In these circumstances an appeal and the associated costs became inevitable. For this reason I do not find a full award of costs is justified.
17. As regards the second application, I did not consider the merits of the development because the appeal succeeded on legal grounds. However evidence at the Hearing suggested that, in terms of the financial test enshrined in planning policy, the merits were not clear cut. In these circumstances the

Council's action in pursuing their case on the planning merits was not unreasonable and the application for a partial award of costs (No.1) does not succeed.

18. The third application was made on the basis that the Notice was flawed and that case law indicated that the structure was a building. It is common ground that the Notice was indeed faulty, but the parties agreed that it was neither a nullity nor invalid. The Council identified the faults in the allegation and, following an exchange of correspondence, an agreed alternative was put forward before the Hearing opened. Consequently little time was spent on this during the Hearing. However I agree that the time spent in the pre-Hearing correspondence was only necessary because of the errors in the drafting of the Notice.
19. In terms of the second element of this application I have already found above that this was a matter of planning judgment.
20. Consequently the applications for a full award and for a partial award (No. 1) fail, but the application for a partial award (No.2) succeeds in part. I shall therefore grant the application to the extent that it is limited to the costs incurred by the applicant in pursuing the pre-Hearing correspondence concerning the correction of the enforcement notice.

Costs Order

21. 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 Winchester City Council on behalf of South Downs National Park Authority shall pay to Mr J A Kopinski, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in pre-Hearing correspondence during April 2017 concerning the re-drafting of the Enforcement Notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Winchester City Council on behalf of South Downs National Park Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Sukie Tamplin

INSPECTOR