



Costs Decision

Site visit made on 10 July 2017

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

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

Decision date: 17 July 2017

Costs application in relation to Appeals A & B Ref:

APP/J9497/C/16/3165395/6

Land at East Wray Barton, Moretonhampstead Road, Lustleigh, Newton Abbot, Devon TQ13 9SN

- 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 Mrs Sharon Hunt and Mr Patrick Hunt for a full award of costs against Dartmoor National Park Authority [hereinafter "the NPA"].
 - The appeal was against an enforcement notice that alleged: Without planning permission, operational development consisting of building operations and engineering operations to: (a) Excavate the Land; (b) Construct retaining walls on the Land; (c) Construct flights of steps on the Land; (d) Change the levels and contour of the Land; in the location shown edged red on the Plan ("the Development").
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Decision

1. I refuse the application for an award of costs.

The case for the parties

2. The Appellants originally gave what is in effect notice of an intention to apply for costs at point 21 of the grounds for appeal. Details were then given in the Appellants' Agent's letter dated 8 May 2017. A further submission in the matter of costs was appended to the Appellants' Agent's letter dated 8 June 2017. I am satisfied that the NPA has been given a full and fair opportunity to respond to these submissions as, amongst other things, The Planning Inspectorate sent an email to the NPA on 19 June 2017 inviting comments by 26 June 2017. However the NPA has at no stage formally responded to the costs application.

Reasons

3. The Planning Practice Guidance [the 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.
4. The first basis on which the application is made is that the NPA has not complied with its own enforcement policy, but I am not satisfied that this claim has been made out. The excerpt said to be from the NPA's website, in italics in the Appellants' Agent's letter dated 8 May 2017 says, in the third bullet-point, that a retrospective application will be encouraged *unless* the development is contrary to adopted policies or causes serious harm. It would appear from the face of the enforcement notice and the NPA's statement that the NPA consider that the development was contrary to adopted policies. Although I have given reasons for disagreeing with that assessment in my main decision this is a

matter of professional judgement. This provides no basis to find that the NPA did not follow its published approach to enforcement.

5. I have noted the "*Local Enforcement Plan*" including, amongst other things, the procedures flow diagram. However page 12 of the document makes clear that: "...each investigation will evolve depending upon the severity of the breach...". It continues by saying the flow diagram is: "...based on a generic case and is intended to give an indication as opposed to a steadfast approach in every instance". So whilst various allegations are put, including having to exclude the development from planning applications for other works to the barn, lack of opportunity to discuss matters and an alleged failure to respond to letters and other communication, it would appear, on the limited information before me, that a view was taken at an early stage that the works were unacceptable. Page 13 of the "*Local Enforcement Plan*" explains that: "...officers are able to determine expediency", and so it is clear there is a high degree of discretion. It follows that there is a high hurdle to overcome in order to show that the NPA has not complied with its own enforcement policy and that it has not been met.
6. Turning to the submission appended to the Appellants' Agent's letter dated 8 June 2017, I have reviewed what is said, in particular, in paragraph 6.4 of the NPA's statement. When the paragraph is read holistically I consider that the NPA's position has not changed from what is set out in section 5 of the notice, which appears to seek to remedy the breach by restoring the land to its condition before the breach took place. Section 8 of the NPA's statement is clear that it seeks that the appeal be dismissed and the requirements of the notice be upheld. In other words the statement is not making any concessions or suggesting a lesser requirement be agreed by allowing the ground (f).
7. Nevertheless I agree that the first limb of the first sentence of paragraph 6.4 of the NPA's statement is confusing as it appears to me that it is directly contrary to what the notice seeks and the case that the NPA does seek to advance. On balance however, given the remainder of the statement, I consider that the overall message is clear and I am not convinced that this was unreasonable. Even if it might be said to be unreasonable, I am not convinced that this has directly caused unnecessary or wasted expense in the appeal process, which is the relevant test, distinct from substantial prejudice, which is what is claimed.
8. Turning to point 4 of that submission, given my earlier finding that it has not been shown that the NPA has not complied with its own enforcement policy, I can add little in respect of the claim that discussions might have resulted in a solution without resorting to enforcement action. There is no other basis to find that the NPA's position with regard to ground (g) was unreasonable.
9. In relation to point 5 of that submission, I find no basis to support the claim that the NPA failed to assess the submitted and approved plans before issuing the notice. I consider that the NPA's position in this respect, as set out in its statement, has been consistent. I have given reasons in my main decision why I reject the submissions that have been made in pursuit of the claim that works within the appeal site had been granted planning permission at any stage. The reinstatement of the original levels would have achieved a set of steps through the main part of the garden to serve the permitted parking areas. Whilst this would still have required some form of connection from the lowered path at the rear of the gable onto the level above any retaining structure, the permitted plan was, perhaps deliberately, anticipating that agreement could be reached¹.

¹ See discussion, including footnotes, in paragraph 18 of my main decision.

In any event I find nothing in this submission that would lead me to find that there has been unreasonable behaviour in this respect.

10. I have noted the reference to the Guidance², in point 6 of that submission, and note that the NPA's statement was submitted in accordance with the timetable for these appeals and, given the NPA's professional judgement, these cannot be said to be unnecessary appeals. For the same reason I reject the claim that the NPA has not exercised its development management responsibilities properly. This is not a case in which development should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations³. It is instead a case where the respective arguments are finely balanced. In those circumstances, having regard to the thrust of relevant Guidance⁴, I reject the claim that there has been unreasonable behaviour or that the NPA should be liable for an award of costs on this basis.

Conclusion

11. For the reasons identified above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Pete Drew

INSPECTOR

² Paragraph ID: 16-028-20140306.

³ As per first bullet-point of paragraph ID: 16-049-20140306.

⁴ First sentence of paragraph ID: 16-050-20140306 which, whilst it refers to planning applications, applies equally in my view to the judgement that underpins expediency.