
Costs Decision

Site visit made on 18 November 2019

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 4 December 2019

Costs application in relation to Appeal Ref: APP/J9497/18/3218382 The Old Stables, Middle Stoke Farm, Holne, Newton Abbot, Devon TQ13 7SS

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Pamela Melville for an award of costs against Dartmoor National Park Authority.
 - The appeal was against the refusal of the National Park Authority to issue a certificate of lawful use or development for unrestricted full-time residential use of The Old Stables.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Appellant's application for costs is based on what she regards as incompetencies and irregularities in the DNPA's handling of the case. These can be summarised as firstly, the incorrect contention by an Officer of the DNPA that the flats at Middle Stoke Farm were being occupied in breach of planning permission; secondly, the DNPA's publication on its website of certain objections to the application; and thirdly, the apparent change in the DNPA's interpretation of the planning position following receipt of those objections.
4. In March 2018, an Officer of the DNPA contacted Ms Blagburn (who was, at that time, the lodger at Middle Stoke Farm) advising that concerns had been raised with the Authority about the occupation of the flats in breach of conditions attached to the relevant planning permissions. The Appellant then contacted the DNPA and requested that it check its interpretation of the conditions. On 26 March 2018, the same Officer of the DNPA wrote to the Appellant stating "I have checked the planning conditions for 0049/01 and 9/26/008/94/02." The letter went on to interpret these, incorrectly, as allowing permanent occupation of one of the flats by the Appellant and her partner only, with the other being restricted to holiday use.
5. The Appellant contends that in further conversations about this issue, the Officer agreed that the full-time residential occupation of The Old Stables had

been carried out in breach of planning control and for longer than the time limit for enforcement action. On that basis, she submitted an application for a Certificate of Lawful Use or Development (LDC).

6. I agree with the Appellant that it was unreasonable of the DNPA (through its Officer) to interpret the implications of the 1994 and 2001 Permissions, and their respective conditions, in this way.
7. However, that was not the end of the matter. After the LDC application was made on 8 May 2018, but before it was determined on 13 July 2018, the DNPA wrote to the Appellant to explain that its interpretation of the lawful planning status of The Old Stables had been incorrect. I have not been provided with a copy of that letter, but the DNPA states (and the Appellant does not dispute) that it suggested the application for the LDC should be withdrawn, and the fee paid for the application would then be refunded. By email dated 2 June 2018 the Appellant advised the DNPA that she did not wish to withdraw the application, and that it should proceed to determination.
8. It is important to bear in mind that for an award of costs to be justified, it is not sufficient that unreasonable behaviour has occurred: it must also be shown that the unreasonable behaviour was the cause of unnecessary or wasted expense. In this case, while I have found that it was the unreasonable behaviour of the DNPA which caused the Appellant to make the LDC application in the first place, the Appellant was subsequently provided with the opportunity to withdraw the application and recover the application fee.
9. The Appellant's decision to pursue the application, notwithstanding the DNPA's notification of its changed position on the planning status of The Old Stables, was her own. The costs she subsequently incurred in appealing against the DNPA's refusal of the application are attributable to her decision to proceed with that application, rather than to the actions of the DNPA.
10. Turning to the DNPA's publication of objections to the application, there is nothing inherently unreasonable in this. I understand the Appellant's concern that some of the assertions made in those objections were factually incorrect, and/or unrelated to planning matters. However, the important point is that the Appellant has had a fair opportunity to respond to all of the matters raised by third parties as part of the appeal process. While it is to be expected that the DNPA as local planning authority would check the accuracy of written representations before placing weight on them as part of its decision-making process, it is under no obligation to perform any such check prior to publishing them on its website. I note the Appellant's assertion that some of the comments are libellous or defamatory: it remains open to her to pursue that claim through the appropriate channel.
11. As to the Appellant's assertion that the DNPA's change of mind about the lawful use of the two flats was made immediately following receipt of objections to the LDC application, again, there is nothing inherently unreasonable in that. The DNPA has not provided any explanation as to how or when it came to the realisation that the interpretation provided by its Officer in March 2018 was wrong, but even if the Appellant is correct in her view that this happened immediately after the objections were received, that is not in itself unreasonable.

12. Had the DNPA persisted with its original incorrect interpretation of the planning position and determined the LDC application on that basis – or, having reviewed the original interpretation and found it to be incorrect, had it failed to communicate this to the Appellant – it would have behaved unreasonably. But that is not what happened here. Whatever the trigger may have been for reviewing its original interpretation, the DNPA established, less than a month after the submission of the application and more than a month before its determination, that it had interpreted the restrictive conditions incorrectly. Having done so, it advised the Appellant of the error and of its revised interpretation, and suggested the steps it considered appropriate in the circumstances. I understand that the Appellant is aggrieved by this change of position, but that does not render the DNPA's behaviour unreasonable.
13. In summary, I have found that the DNPA behaved unreasonably in adopting an incorrect interpretation of the extant Planning Permissions and conditions governing the lawful use of the two flats, and prompting the submission of the LDC application on that basis. However, the fact that the DNPA subsequently realised its error, and provided the Appellant with the opportunity to withdraw the application, means that the costs of pursuing an appeal against the refusal of that application are not attributable to the unreasonable behaviour of the Appellant but rather to the Appellant's decision to pursue, for her own reasons, the LDC application as submitted. I have found that the other incidents of unreasonable behaviour alleged by the Appellant are not, in my judgment, substantiated.
14. I therefore conclude that the application for an award of costs should fail.

Jessica Graham

INSPECTOR