
Costs Decision

Inquiry Held on 2 & 3 April 2019, 24 to 27 September 2019 and 4 & 6 December 2019

Site visit made on 5 December 2019

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Costs application in relation to Appeal Ref: APP/Q3115/C/18/3215490 & 3215491; APP/Q3115/W/18/3210681; and APP/Q3115/W/18/3210682. Land at Holly House, Harpsden Bottom, Harpsden, Henley-on-Thames RG9 4HR (formerly known as Little Hill Cottage)

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Harpsden Parish Council and neighbouring residents for a partial award of costs against Mr David Snowden MBE and Mrs Jessica Snowden.
 - The inquiry was in connection with an appeal against an enforcement notice alleging, without planning permission, the erection of various buildings and the laying of hardstanding on the site, and the refusal of South Oxfordshire District Council to grant planning permission for a detached dwelling, outbuilding and underground store.
-

Decision: the application is refused

The submissions for Harpsden Parish Council and neighbouring residents

1. The application for costs relates solely to the costs incurred by Harpsden Parish Council and neighbouring residents (HPCNR) in preparing for and attending the initial Inquiry session held on 2 and 3 April 2019. HPCNR was designated a Rule 6 Party in early February 2019 and submitted its Statement of Case on 25 February 2019. Proofs of evidence and statements of common ground were exchanged on 5 March 2019. The appellant was therefore fully aware of HPCNR's position on these cases a month or so prior to opening of the Inquiry.
2. The morning session of Day 1 of the Inquiry was taken up with housekeeping matters, the wording of the enforcement notice and opening submissions. During the lunchbreak, the appellant approached the Council to open discussions into a possible compromise agreement. HPCNR was invited to participate in those discussions shortly afterwards. This culminated in a request for a short adjournment, followed by a further request for an adjournment to the following day.
3. The result of those discussions was the 'Adjournment Agreement' produced to the Inquiry on 3 April. The bare bones of the Adjournment Agreement were: the removal of the underground store and the restoration of the sloping landform; the demolition of the as-built outbuilding and the construction of a smaller outbuilding position further away from the boundaries; minor amendments to the house; and a detailed landscaping scheme. The Inquiry

was adjourned to allow for the submission of the application outlined the Adjournment Agreement.

4. Planning permission was granted for application P19/S1395/FUL on 23 August 2019. The appeals were not withdrawn and the Inquiry resumed for four days in September 2019, subsequently resuming for a further 2 days in December (plus an accompanied site visit between those days).
5. The only outcome of the Inquiry sessions in April was the Adjournment Agreement. Nothing happened during the morning session of Tuesday 2 April which led to or influenced the Adjournment Agreement in any way. The four main factors in the Adjournment Agreement had all been known to the appellants from at least the exchange of Proofs of Evidence in March. The conclusion must be that it was totally unnecessary for the Inquiry to open in order for the appellant to open discussions with the Council or the parties to reach in the Adjournment Agreement. The Inquiry could have been adjourned before opening and the events could have unfolded just as they did over the summer and autumn.
6. The costs for preparation for the Inquiry sessions is sought because, following the grant of planning permission P19/S1395/FUL, the appellant's case changed significantly. There was a replacement Proof of Evidence with new appendices. It is accepted that the appellant was entitled to put his case how he saw fit, but the combination of a lengthy adjournment and the fresh material meant that a second, separate preparation was required for the resumed Inquiry.

The response by Mr David Snowden MBE and Mrs Jessica Snowden (the appellants)

7. It is deeply regrettable that this application has been made. The application was made without any real notice and without justification.
8. No allegation of unreasonable behaviour was made until the question was raised with HPCNR on 4 December 2019. Confirmation that the application would be made was only received on the morning of 5 December and was only particularised in writing on the morning of the final day of the Inquiry. That in itself was unreasonable.
9. The application is predicated on three huge errors and completely is completely flawed. The central basis for the application is that nothing that occurred at the Inquiry precipitated the negotiations that led to the adjournment. That is wholly untrue and extraordinary.
10. The cause of the negotiations was a comment in the Council's opening submissions to the Inquiry on the morning of 2 April. Within those submissions was the suggestion that the Council would be open to granting permission for a scheme that secured a substantial reduction in the harmful effect of the dwelling. Prior to that moment, not once had the Council expressed any similar position across a period of 18 months.
11. The appellant had attempted to find such a compromise prior to and following the issuing of the enforcement notice. That was the purpose of the retrospective applications. But at no point throughout the history of the dispute did HPCNR itself suggest a scheme that would be acceptable or seek a meeting with the appellant. It is far from uncommon to find scope for

agreement once an Inquiry has started where no such agreement was reached before, and to suggest that it was unreasonable to try to find further common ground is bizarre. Parties are constantly advised to do everything to narrow the issues between them.

12. What is also remarkable in this application is that at no time does HPCNR admit its culpability and complete and utter acquiescence in the adjournment. Not once did HPCNR oppose the adjournment: they supported the adjournment and positively asked the Inspector to adjourn, collectively and in collaboration with the other parties. Not once did HPCNR raise the point now taken. For HPCNR to contend now that the adjournment led to unreasonable behaviour is an incredible and remarkable submission, which requires that they and the Council were wrong in seeking the adjournment, and that the Inspector was wrong to grant an adjournment. It is telling that the Council has not made an application for costs even though their grounds would be and could be identical to those of HPCNR: they are out on a limb.
13. The appellants have not breached the Adjournment Agreement. That agreement specifically acknowledged that it would not prejudice the position of the parties on the appeals. There was no clause in the Adjournment Agreement that the appeals would be withdrawn if the planning permission for the scheme posited by that agreement was forthcoming. If HPCNR have been naïve not to include a term in the Adjournment Agreement requiring the withdrawal of the appeals upon the grant of the 2019 permission, that does not make the appellant's behaviour unreasonable.
14. The application should be firmly rejected and summarily dismissed.

Reasons

15. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG advises that a partial award of costs may be awarded where, for example, an unnecessary adjournment is caused by the unreasonable conduct of one of the parties. In such circumstances, the award of costs may be limited to the abortive costs of attending the event on the day of the adjournment.
16. In the situation described above, the advice in the PPG establishes that two factors must be present for an award of costs to be made: (i) the adjournment must be unnecessary, and (ii) the adjournment must be caused by the unreasonable conduct of one of the parties. I will consider these two factors in turn.
17. In considering whether the adjournment was necessary in this case, it is helpful to go back to other parts of the PPG. In relation to what type of behaviour may give rise to a procedural award against an appellant, the PPG indicates that one such situation might be a lack of co-operation with the other party or parties in discussing the application or appeal. Similarly, the PPG indicates that a local planning authority may be at a risk of costs against it should it fail to co-operate with the other party or parties.

18. I do not know if the comments in the Council's opening submissions were purposefully intended as an invitation to the appellants to open discussions. In any event, I can fully understand why the appellants perceived them as such and responded at what was the first available opportunity (the lunch break on the first day of the Inquiry). In my view, the appellants were entirely reasonable in doing so: indeed, not to have done so could have been construed as unreasonable behaviour in the context of the PPG.
19. The corollary of the above is that the first plank of the applicant's claim for costs falls away. The question may fairly be asked why the invitation made in the Council's opening submissions, assuming that it was intended as such, was not made some time prior to the opening of the Inquiry. In that respect, I take the applicant's point that the respective positions of the parties were known as least one month before the Inquiry opened. Nevertheless, there is nothing before me to suggest that such an invitation had been forthcoming, either in the month immediately prior to the opening of the Inquiry or prior to that.
20. There is, therefore, nothing to indicate that the Adjournment Agreement could have been reached before the Inquiry opened or that the events of the summer could have unfolded without the Inquiry being opened in April or at all. To the contrary, the evidence before me all points to the opening submissions on behalf of the Council being the catalyst for the discussions that led to the Adjournment Agreement being reached.
21. Having then been approached by the appellants, and bearing in mind the comments that had just been made in its opening submissions, the Council was perfectly entitled to seek an adjournment in order to establish whether there was an opportunity for the matter to be resolved locally. Again, not to have done so could have been construed as unreasonable behaviour in the context of the PPG.
22. In addition to having regard to the advice in the PPG, I have a duty to determine appeals in a timely and cost-effective manner. That is in the wider public interest. It would not have been the public interest to adjourn the Inquiry unless there was reasonable prospect that the matter could have been resolved locally. From the representations made to me, it seemed that all parties (and I include HPCNR in that) believed that there was such a prospect: and with that came the prospect of a considerable saving in costs, time and public resources through the *possibility* of not having to proceed with the Inquiry. From that point, the adjournment became necessary in the wider public interest. I make no criticism of the appellants or the Council for seeking that adjournment. Both acted entirely in accordance with the advice in the PPG, and did not act unreasonably.
23. To my mind, in the context of this application, the crucial thing was the stance taken by HPCNR in all of this as, it must be remembered, a Rule 6 Party. Not only did HPCNR agree to the adjournment, they enthusiastically supported it. Again, I make no criticism of HPCNR for that. They could not realistically have done otherwise: as a Rule 6 Party, to have resisted the adjournment could have been construed as unreasonable behaviour on their part in the context of the PPG. I can only imagine the response of the appellants had they resisted the adjournment.

24. Having enthusiastically supported the adjournment in collaboration with the Council and the appellants, I completely fail to see how HPCNR can now contend that the appellants acted unreasonably in seeking that necessary adjournment. That is an untenable position. I can well understand that HPCNR believed the appeals would be withdrawn if planning permission was granted for a scheme that accorded with the Adjournment Agreement: I had gained the same impression. Nevertheless, the withdrawal of the appeals was not enshrined in the Adjournment Agreement and the appellants did not breach that agreement: the Minutes of the Parish Council Meeting on 16 September 2019 are incorrect in that respect.
25. I can also understand that, in retrospect, HPCNR may have been disappointed that they did not negotiate a term in the Adjournment Agreement requiring the withdrawal of the appeals upon the grant of the 2019 permission. I can understand too that HPCNR may have incurred additional costs as a result of the Inquiry resuming. But none of that makes the appellants' decision to continue with the appeals unreasonable and then to put the case that they saw fit when the Inquiry resumed.
26. I conclude that Mr David Snowden MBE and Mrs Jessica Snowden have not acted unreasonably in the terms set out in the PPG. It follows that an award of costs is not justified in this case.

Paul Freer

INSPECTOR