
Costs Decision

Inquiry Held on 25 and 26 February 2020

Site visit made on 26 February 2020

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 29 June 2020

Costs application in relation to Appeal Ref: APP/J9497/X/18/3217988 Dartmoor Country Holidays, Magpie Leisure Park, Bedford Bridge, Horrabridge, Yelverton, Devon PL20 7RY

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Barton Park Estates Ltd for a full award of costs against Dartmoor National Park Authority.
- The inquiry was in connection with an appeal against the refusal of the National Park Authority to issue a certificate of lawful use or development for use of land for the stationing of up to eighty caravans for the purpose of human habitation.

Summary of Decision: The application is refused

Procedural matters

1. The appeal to which this costs application relates was one of two appeals heard at the same Inquiry: the other concerned an application for a LDC for the existing use of "The Barn", on adjacent land, as an unrestricted dwellinghouse.¹
2. The outline costs application submitted by the Appellant² was drafted on the basis that it sought a full award of costs in respect of both appeals or, in the alternative, a partial award of costs in respect of either of them. However at the Inquiry, following the DNPA's decision to withdraw its objection to the grant of the LDC in the appeal concerning "The Barn", the Appellant amended the terms of its costs application to relate only to the appeal concerning the LDC for the stationing of up to eighty caravans on land at Magpie Leisure Park.
3. I have determined this application on that basis.

Reasons

4. 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. The PPG goes on to provide non-exhaustive lists of the behaviour by a party that would lead to an award of costs. At paragraph 49, it advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing or failing to determine planning

¹ Appeal Ref APP/J9497/X/18/3219534

² Inquiry Document no.10

- applications, or by unreasonably defending appeals. It cites as an example of such behaviour “acting contrary to, or not following, well-established case law.”
5. The Appellant’s application for costs is based on its contention that the DNPA persisted in placing reliance on the numerical limitations, and limitations on the manner of use, contained in the description of the development and in so doing, failed to have regard to relevant case law. The Appellant asserts that as a consequence of its failure to have proper regard to the relevant case law, the DNPA failed to interpret the prevailing planning permissions correctly, and erroneously considered materiality to be relevant.
 6. In my judgment the reasoning provided by the DNPA, in the course of determining the application and defending its decision at appeal, does not support this contention. The Officer’s Report on the application correctly noted that the proposed use of the site for up to eighty caravans would not constitute a breach of condition, because no condition limiting numbers had been attached to any of the potentially relevant permissions. The report cited legal advice that it would be a matter of planning judgment whether the proposed use would be a material change of use, and that in assessing whether there would be such a material change, “the decision cannot be about numbers because they are not conditioned.”
 7. Mr Aven’s proof of evidence reiterated the point that there is no condition limiting numbers. He sets out his understanding of case law as providing that a change need not be to a different kind of use altogether before it may be regarded as material; a material change of use may occur where an existing use is intensified, so that although the same description may still be applied to it, it has undergone a change in character.
 8. For the reasons set out in my determination of the appeal to which this costs application relates, I concluded that the relevant case law does not support the Appellant’s contention that because there are no conditions restricting the number of caravans that may be placed on the appeal site, or the type of occupation for which they may be used, the existing grant of Planning Permission provides for an unrestricted number of residential caravans for year-round occupation. I found that rather, it was necessary to ascertain the use for which permission had been granted by interpreting the words in the planning permission itself, and then assessing whether, as a matter of fact and degree, the proposed use would be a material change of use.
 9. That is, essentially, the approach that was taken by the DNPA. It follows that I do not consider the approach taken by the DNPA unreasonable. I find no evidence to support the contention that the DNPA has acted contrary to, or failed to follow, well-established case law. I therefore conclude that the application for an award of costs should fail.

Formal Decision

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

Jessica Graham

INSPECTOR