The Planning Inspectorate

Costs Decisions

Inquiry Held on 4 August 2020
Site visit made on 13 August 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2020

Costs application 1 in relation to Appeal A Ref: APP/X0360/C/19/3221552 and Appeal B Ref APP/X0360/C/19/3221553
White Heart Grove, The Coombes, Coombes Lane, Barkham, Berkshire RG41 5SU

- 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 Mrs Candice Jules and Mr Dean Jules for a full award of costs against Wokingham Borough Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging Without planning permission the unauthorised construction of a timber building and its use as a dwelling.

Costs application 2 in relation to Appeal A Ref: APP/X0360/C/19/3221552 and Appeal B Ref APP/X0360/C/19/3221553

White Heart Grove, The Coombes, Coombes Lane, Barkham, Berkshire RG41 5SU

- 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 Wokingham Borough Council for a full award of costs against Mrs Candice Jules and Mr Dean Jules.
- The inquiry was in connection with an appeal against an enforcement notice alleging Without planning permission the unauthorised construction of a timber building and its use as a dwelling.

Costs Application 1

Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)[1] advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. Paragraph 048 of the PPG states that local planning authorities must carry out adequate prior investigation, and are at risk of an award of costs if it is found

[1] Reference ID: 16-030-20140306

that an appeal could have been avoided by more diligent investigation that would have avoided the need to serve the notice[2].

4. The appellants' case is that inadequate prior investigation was undertaken by the Council; that it appears to be saying that it was given no prior notice that the structure was a caravan; that it has failed to substantiate the allegation that a building has been erected, with no evidence being adduced to support this; and that the Council has acted contrary to case law in requiring that a caravan be capable of being lawfully moved by highway and that the physical characteristics of a site and its surroundings can determine whether a structure is a caravan or not.

5. The appellants' first point is that further investigation by the Council would have demonstrated, on the balance of probability, the status of the structure as a caravan, and not a building. However I concur with the Council that the evidence to support caravan status is not unequivocal and the outcome of an investigation into a structure of the nature subject to this case would turn on a fact and degree assessment.

6. Whilst it could be said that had the Council carried out further investigation there is a possibility it may have arrived at a different view about caravan status, in my reading this is only a possibility, rather than a probability. By contrast, the onus rests with the appellants to provide evidence to prove their case, on the balance of probability. Although it is clear that the appellants drew to the Council's attention their position as to caravan status, to my mind the presentation of their case in correspondence leading up to the service of the enforcement notice left scope for challenge, particularly in terms of the mobility of the structure.

7. Mr Varley's evidence was that he considered the structure to be a building based on it being pinned to the ground, its size, that it remained in one place and its lack of mobility. I disagreed about the nature of affixation, as set out in the main decision. This however did not mean that the Council took an unreasonable stance in a fact and degree assessment. Furthermore it was conceded in cross-examination by Mr Varley that site circumstances were not relevant to the mobility test. However, such a concession does not then make it unarguable that the mobility test should succeed, for the reasons set out in my decision.

8. The appellants were warned of impending enforcement action by the Council.[3] In responding to this, the appellants could have set out further evidence in support of their stance regarding the mobility test, in particular, for the structure, or confirmed that they would provide further evidence, however this was not the case[4].

9. The appellants complain that the Council's action was rushed, and that it was under no pressure, such as from impending deadlines, to serve the notice. I accept that there was no risk of the appellants being able to argue that the structure was immune from enforcement due to the passage of time. However, I am also mindful of national planning policy which states that effective enforcement is important to maintain public confidence in the

[2] Reference ID: 16-048-20140306
[3] Wokingham Borough Council letter dated 18 January 2019
[4] QWC letter dated 21 January 2019

planning system[5]. Efficiency and timeliness therefore continue to be important outside of immunity considerations.

10. Furthermore s172(1) of the Act states that local planning authorities may issue a notice where it appears to them that there has been a breach of planning control and it is expedient to do so. Accordingly the test for service of the notice is that there only has to be an appearance of a breach. The Council does not have to satisfy itself beyond doubt that a breach has occurred. In withdrawing their ground (e) appeal the appellants accepted that the enforcement notice was served as required by s172 of the Act. I do not therefore agree with the view that the Council's case was compromised through acting when it did.

11. Drawing the above considerations together I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Costs Application 2

Decision

12. The application for a full award of costs is refused. However a partial award of costs is approved in the terms set out below.

Reasons

13. The Council argues that the appellants have behaved unreasonably, both in procedural terms through their day to day conduct and in substantive terms through failing to provide the most basic supporting technical evidence and by pursuing unarguable grounds of appeal which were subsequently withdrawn at a late stage in the proceedings.

14. The Council has referred to the appellants' approach being unacceptably belligerent and unhelpfully entrenched and hostile. My impression is that the parties in giving evidence and exchanges of correspondence, have adopted robust positions, that do not always appear to have been expressed in amicable terms.

15. This is exemplified in the correspondence leading up to the submission of the Statement of Common Ground (SOCG), and I acknowledge that, somewhat paradoxically, even the submission of that document itself was challenged by the Council at the Inquiry.

16. However I am not persuaded that such positions and exchanges, in themselves, have resulted in any wasted expense being incurred. In particular I note that the purported SOCG contained four brief paragraphs and that the information therein did not serve to waste Inquiry time or have any significant bearing on the outcome of the appeal.

17. The Council also complains that, as it turned out, the legal issues could have been comprehensively addressed by written representations and that there was no need for an Inquiry. However on this point I concur with the appellants that, following their suggestion in March 2020 that a written procedure would

[5] National Planning Policy Framework – paragraph 58

be likely to suffice, it was the Council that requested that the appeal remain under the Inquiry process.

18. In terms of the evidence submitted by the appellants, it was a matter for them as to how to argue their case. Although I found the omission of technical evidence to be a shortcoming in this particular case, in support of the 'mobility test', this did not equate to unreasonable behaviour.

19. Paragraph 052 of the PPG states that appellants are required to behave reasonably in relation to procedural matters on the appeal. The withdrawal of an appeal without good reason is cited as an example of unreasonable behaviour which may give rise to a costs award.

20. With regard to the timing of withdrawal of some of the grounds of appeal and whether they were properly arguable, the appellants confirmed in a notification dated 3 August, the day before the Inquiry, that they withdrew their appeals under grounds (c), (e) and (f).

21. The basis of the ground (c) withdrawal was that if the structure was found to be a building, then since it had been used as a dwelllinghouse it cannot benefit from permitted development rights under Schedule 2 Part 6 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

22. The appeal on ground (e) was withdrawn on the basis of the appellants' concession that the notice had been served as required by s172 of the Act.

23. The appeal on ground (f) was withdrawn given that to have reached this point in the process, a building would have been found to have been constructed, and the appellants do not seek to put forward lesser steps to remedy the breach of planning control comprising the erection of a building used as a dwellinghouse.

24. I am not persuaded, on the balance of probability, regarding the appellants' rebuttal submission that the entirety of the appellants' case on the ground (c) appeal proceeded on the basis of an allegation of breach being amended and identifying 'stationing of a caravan' instead. The likelihood of such an amendment is not contemplated at any point within the appellants' statement or evidence, Mr. Gower specifically stating within his proof that the allegation is not about the stationing of a caravan and that it is not permissible to broaden the scope of the notice.

25. Mr. Gower also stated in email correspondence to the Council, dated 3 August 2020[6], that ground (c) was "lodged in relation to the alleged residential use of the land and our wish to ensure the Inspector was aware that any residential use of the land that may have taken place was not a breach of planning control, but instead PD." There is no indication here of the reason for the ground (c) appeal being the risk of an amended allegation. Furthermore it was undisputed by the parties that I could not correct the notice to change the description of the alleged breach, in the event that I did not find the structure to be a building, without causing injustice, because of the unavailability of the ground (a) appeal.

[6] See LPAs Costs submission

26. The appellants say that the grounds of appeal were withdrawn particularly in light of the Inspector's proposed amendment to the description of breach. I do not consider that it is correct to say that I was proposing such an amendment. Rather, I requested to hear evidence, without prejudice, and in the event I decided that the structure on site was a caravan, as to whether the description of the alleged breach and the requirements could be corrected accordingly without resulting in injustice.

27. Furthermore, within the appellants' statement reference was made to the description as a dwelling being misplaced[7] and also that the matters before this appeal do not relate to the provision of a dwellinghouse[8]. I am in no doubt that these statements could reasonably be interpreted as being at odds with the aforementioned concession in the reason for withdrawing the ground (c) appeal, where it was accepted that the structure had been used as a dwellinghouse, albeit that this could be interpreted as being predicated on a finding that the structure was a building.

28. Nevertheless, the appellants still chose to lodge an appeal on ground (c), in relation to which the Council were entitled to produce rebuttal evidence. The appellants' ground (c) case was underpinned by a forestry justification, albeit that this was argued in the context of Schedule 2 Part 5 of the GPDO. It seems to me that the Council's ground (c) response sought to address the question as to whether there was a forestry justification for the structure, although this was argued primarily in the context of Schedule 2 Part 6 Class E of the GPDO.

29. The appellants say that the decision by the Council not to call its forestry expert witness, at the Inquiry, in light of the withdrawal of the ground (c) appeal did not make them responsible for any resulting wasted expense. The reason given for this was that the Council should have been aware that the appellants could not sustain an argument that if the structure was found to be a building, it could then benefit from Part 6 of the GPDO, given that it had been used as a dwellinghouse, and thus was not permitted.

30. However, as set out above, up until a late stage in the process, the appellants' position was that the matters before the appeal did not relate to the provision of a dwellinghouse, and I am not persuaded that the Council were wrong to approach their defence of this appeal ground primarily in terms of a forestry related building. The substance of the Council's evidence that was produced to defend this appeal ground is not for consideration in relation to the Costs application. It does not overcome the fact that the appellants withdrew their appeal at a very late stage resulting in wasted expense.

31. Aside from this, it seems to me that had I been in a position to conclude that the structure was a building, but not one that involved the provision of a dwelling, it would have been open to me to amend the alleged breach, without resulting in injustice. Under such circumstances the Council's evidence regarding Part 6 of the GPDO would have been necessary.

32. I acknowledge that the withdrawal of the appeal on grounds (e) and (f) would have resulted in the Council incurring less wasted expense. However, in applying itself to addressing these challenges I do not consider that abortive work can be said to be simply *de minimis*.

[7] Paragraph 2.8 Appellants' statement
[8] Paragraph 3.4 Appellants' statement

33. Drawing the above considerations together, and irrespective of the Council's complaint that the withdrawn grounds were unarguable, I therefore find that unreasonable behaviour resulting in wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

34. 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 Mrs Candice Jules and Mr Dean Jules shall pay to Wokingham Borough Council, the costs of the appeal proceedings, limited to those costs incurred in relation to the late withdrawal of appeal grounds without good reason; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

35. The applicant is now invited to submit to Mrs Candice Jules and Mr Dean Jules, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Roy Merrett

INSPECTOR