



Costs Decision

Inquiry Held on 14 September 2021

Site visit made on 14 September 2021

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 21/10/2021

Costs application in relation to Appeal Ref: APP/D0840/C/21/3268530 Land known as Higher Hawks Tor, Bodmin, Cornwall PL30 4BB

- 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 Cornwall Council for a full award of costs against Mr David Barriball.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of: the building known as Higher Hawks Tor to a mixed use comprising a HMO and a self-contained flat; Lower Hawks Tor to three dwellings; an outbuilding to a single dwelling; and land to the stationing of caravans for residential use.
-

Decision

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

The submissions for Cornwall Council

2. The application was made in writing, after closing submissions but before the Inquiry closed, and the written application forms Inquiry Document 6. In summary, and with reference to paragraphs 28, 30, 31, 52 and 53 of the Government's Planning Practice Guidance (PPG), the Council's case is that Mr Barriball acted unreasonably in (i) failing to provide a proof of evidence; (ii) failing to co-operate in the provision of information; and (iii) pursuing an appeal with no real prospect of success, and without sufficient evidence.

The response by Mr Barriball

3. Mr Barriball responded orally, after a brief adjournment to consider the application. In summary, he stated that he would never have turned Higher Hawks Tor into a HMO had he known planning permission was required, and holds the Council responsible for not explaining this to him, despite having visited his property on numerous occasions. He had carried out all of the works requested by the Council, at considerable cost, without anyone from the Council telling him what was needed in terms of planning permission. He asserted that the Council must carry some blame for the situation. As to the appeal, he had pursued it on the basis that he believed he had done what he needed to do, and carried it out right. His understanding had been that the Council had four years in which to take enforcement action; he did not understand why it should be ten for a HMO.

Reasons

4. The PPG 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.

The absence of a proof of evidence

5. The requirement to provide a proof of evidence in advance of an inquiry is provided by Rule 15 of *The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002*. It states that any person entitled to appear at an inquiry who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence [my emphasis] shall send copies of the proof of evidence to the Secretary of State (in practice, the Planning Inspectorate) no later than four weeks before the date fixed for the holding of the inquiry.
6. This is reflected in the letter which the Planning Inspectorate sends to the parties entitled to appear at an inquiry, setting out the timetable for the submission of documents.¹ Under the heading "No later than 4 weeks before the inquiry" it states that both parties must send two copies of their proofs of evidence, then goes on to explain that a proof of evidence is a written statement that the Appellant, the Council or a witness wishes the Inspector to take into account at the inquiry.
7. There is, then, only a requirement upon an Appellant to submit a written proof of evidence if they intend to read from it at the inquiry. In cases where, as here, the Appellant intends to (and does) give oral evidence at the event, without reading from or referring to any written proof of evidence, the requirement cannot apply. It is of course helpful to have a written document in advance of the inquiry, as this assists with effective preparation (for the Inspector as well as the Council). But in my experience it is not unusual, or unduly problematic, for Appellants who are not professionally represented to prefer to present their evidence orally.
8. Taking all of this into account, I conclude that the Appellant's failure to submit a proof of evidence was not unreasonable behaviour.

Failure to co-operate in the provision of information

9. The Council's particular concerns in this regard were Mr Barriball's failure to respond to its Planning Contravention Notice (PCN) of 25 May 2018, which sought information about the stationing of caravans on the land for residential occupation, and his provision of information shown to be "manifestly inaccurate or untrue" (per paragraph 52 of the PPG).
10. Failing to respond to a PCN is a serious matter, and is one of the specific examples given by PPG paragraph 52 of behaviour that may give rise to a procedural award against an Appellant. In his oral evidence to the inquiry the Appellant explained that items sent by post sometimes do not reach him, and that he relies on his son to deal with items sent by email, so they do not always get passed on. However, the Council's undisputed evidence was that two reminders of the need to complete the PCN were sent to the Appellant in 2019, and he was also reminded in person at a meeting in the Council Offices

¹ In this case, that letter was sent on 10 May 2021, to the Council and to the Appellant.

on 14 December 2018. In these circumstances, I conclude that the Appellant's failure to respond to the PCN was unreasonable.

11. However, it is not clear how this unreasonable behaviour could be said to have resulted in unnecessary expense on the part of the Council. There is not, for example, any indication that the Enforcement Notice would not have been necessary, or would have been drafted (or defended at appeal) differently, had a PCN response been returned. I note that the Council obtained a copy of the sales particulars of the property, which will have involved some expense (even if only that of the time spent by the Officer involved), but since the sales particulars also informed the Council's evidence in respect of Building B, that expense cannot be regarded as directly attributable to the Appellant's failure to provide information about the caravans.
12. I conclude that while the Appellant behaved unreasonably in failing to respond to the PCN, this unreasonable behaviour has not been shown to have caused the Council to incur unnecessary or wasted expense.
13. As to the provision of inaccurate or untrue information, no specific items have been identified by the Council in its application for costs. Certainly there are inconsistencies between the information provided by the Appellant in advance of the inquiry (in his responses to the Council's other PCNs; in his grounds of appeal and in his statement of case) and the evidence he gave orally at the inquiry. Not all of these can fairly be blamed on the Appellant: for example, as discussed in my appeal decision, the Council's case that the material change of use to a HMO occurred in January 2019 was based on the fact that this was the date given by the Appellant for the "substantial completion" of "the works" to convert building A to a HMO. That is not inaccurate or untruthful, as further work required by the Council was not completed until then. But neither was the Appellant's subsequent assertion that the breach took place in May 2015 inaccurate or untruthful, as that is when the building was first used as a HMO.
14. The Appellant's evidence in respect of the timing of development at Buildings B and C conflicted with that of the Council. In my appeal decision I set out the reasons why I preferred the Council's evidence, but it is important to be clear that the test was the balance of probabilities. There was not, in my view, sufficient evidence to draw any firm conclusion that the information provided by the Appellant was "manifestly" (the term used by the PPG) untrue or inaccurate: my conclusion was, rather, that such evidence as was provided by the Appellant was not sufficient to prove his case. Since the provision of inaccurate or untruthful information has not been conclusively demonstrated, I conclude that the Appellant cannot fairly be held to have behaved unreasonably in this regard.

Prospects of success, and sufficiency of evidence

15. Paragraph 53 of the PPG explains that an Appellant is at risk of an award of costs if the appeal had no reasonable prospect of succeeding, and goes on to provide a (non-exhaustive) list of examples of when this may occur. The example to which the Council drew my attention begins with the statement that in enforcement appeals the onus of proof on matters of fact is on the appellant, then addresses the situation where an appellant persists with an appeal on the ground that planning permission should be granted, even though a recent appeal decision in respect of the same site makes it plain that it should not. Clearly that is not the situation here.

16. The Council is right, of course, to point out that the burden of proof in this appeal rested on the Appellant, and as I note in my appeal decision, the Appellant did not provide any statutory declarations, letters, copies of tenancy agreements, utility bills or any other documentary evidence to support his case. However, it is important to bear in mind that (at least in the context of this specific appeal against this specific enforcement notice) he did not have the benefit of professional advice or representation.
17. While it may have been apparent to the Council, and to other professionals who engage regularly with the planning system, that the appeal stood no reasonable prospect of success I am not persuaded that this would necessarily be the view formed by an unrepresented Appellant. Mr Barriball, while undoubtedly intelligent and articulate, is not well-versed in the intricacies of the time limits for taking enforcement action where the second-bite provision applies, and nor could he reasonably be expected to be. He pursued the appeal on the basis of his understanding of how the development control system operates, and this cannot be unreasonable: to hold otherwise would, in my view, run the risk of precluding those unable to afford professional representation from exercising their right to appeal.
18. Similarly, the extent of the evidence that an Appellant chooses to submit in support of their case is ultimately a matter for them. Here, Mr Barriball provided very little in the way of written or documentary evidence, and instead preferred to rely solely on his own oral evidence. That may perhaps have been unwise, but was not, in my judgment, inherently unreasonable.

Conclusion

19. For the reasons set out above, I have found that the Appellant behaved unreasonably in one respect: that is, failing to respond to one of the PCNs. However, that behaviour did not itself cause unnecessary or wasted expense to be incurred by the Council. I conclude that an award of costs is not justified.

Jessica Graham

INSPECTOR