The Planning Inspectorate

Costs Decision

Inquiry Held on 15 February and 21,22 & 23 June 2022

Site visit made on 22 June 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2022

Costs application in relation to Appeal Ref: APP/M9496/C/20/3257888 Land at the former Whitelow Mines to the south of the junction of Blakemere Lane and Leys Lane, Bonsall, Derbyshire.

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Peak District National Park Authority for a partial award of costs against Mr Robert Spencer.
- The appeal was against an enforcement notice alleging the material change of use of the Land to use for motocross scrambling, where scrambling is use of any motor cycle or motor vehicle for the purposes of either racing, competition, jumping or negotiating obstacles, a display for entertainment, leisure or recreation, trails of speed, or the testing, practice or training for any of these activities.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Peak District National Park Authority (NPA)

2. The application was submitted in writing and expressed orally at the Inquiry. The NPA contend that a partial award of costs is justified because the Appellant introduced a new ground of appeal in openings on the first morning of the Inquiry. The introduction of a ground (b) appeal resulted in the Inquiry being adjourned to allow the Appellant to prepare a Supplementary Statement of Case to address the ground (b) matter. A partial award of costs is claimed solely in relation to the costs incurred as a result of the adjournment.

3. The Appellant's response was made in writing and expressed orally at the Inquiry. In response it is claimed that the adjournment arose from the NPA drafting of the enforcement notice to include activities in the alleged breach which the NPA knew/or had no evidence to demonstrate had occurred. It is argued that the NPA should not assert something in the notice which it has no evidence of taking place. In addition, the Appellant contends that an adjournment was inevitable as the NPA had failed to disclose material documents despite requests to do so.

Reasons

4. The Planning Practice Guidance (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.

5. PPG advises that the Appellant is at risk of an award of costs if they behaviour unreasonably in relation to procedural matters on the appeal. Examples include: prolonging the proceedings by introducing a new ground of appeal or issue.[1]

6. The Inquiry opened on 15 February 2022. It became apparent during opening submissions on behalf of the Appellant that he was disputing the matters set out in the alleged breach of planning control. Submissions were made that some of the activities described in the notice had not occurred as a matter of fact, and a request made to vary the enforcement notice to reflect the actual use.

7. During a lengthy discussion between the main parties and Inspector it became clear that the Appellant was making a ground (b) point. It was agreed that it would not be possible to amend the notice without the main parties having the opportunity to consider matters put forward within the new ground, and to provide and hear evidence on those matters. Consequently, the Inquiry was adjourned for the Appellant to serve a Supplementary Statement of Case to address the ground (b) point and to allow time for the parties to respond. New dates for the resumed Inquiry needed to be agreed.

8. The Appellant lodged his appeal in August 2020 citing grounds (d) and (f) as reasons for appealing. Those same grounds of appeal were elaborated on in his Statement of Case, dated April 2021. The Appellant's proof of evidence supported those grounds. At no time prior to the Inquiry was there a suggestion that the matters/activities alleged in the notice had not occurred as a matter of fact.

9. I have taken into consideration the Appellant's assertion that the NPA should not have made an allegation which included activities which they knew/or could not demonstrate had taken place. However, I agree with the NPA that it was necessary for them to include all the activities they understood to be taking place on the Land and to describe the use to the best of their knowledge. An appeal on ground (b) enables an Appellant to refute those allegations and the onus of proof is on the Appellant to make out their case on this legal ground.

10. The Appellant has not provided any explanation as to why their case had not previously expressed concerns regarding the way the notice expressed the alleged breach of planning control. To wait until opening submissions at the Inquiry to introduce this new ground was unreasonable and resulted in an adjournment and delay in the proceedings. Furthermore, both the Inspector and the NPA made the Appellant aware that such behaviour may result in a subsequent application for costs attributable to the adjournment.

11. It is not clear how the Appellant's assertion that, "an adjournment would have occurred in any event", addresses the reason why the NPA have made their application for costs. If the Appellant had concerns over matters relating to the disclosure of documents, those concerns should have been introduced during the Inquiry. At no time prior to/or during the Inquiry did the Appellant suggest that they required an adjournment for those reasons. Moreover, the actions of the NPA in relation to the disclosure of documents does not explain the Appellant's late introduction of a ground (b). I therefore give this consideration little weight in my consideration of the costs claim.

[1] PPG Paragraph: 052 Reference ID: 16-049-20140306.

Conclusion

12. The PPG makes it clear that an appellant is at risk of an award of costs if they behaviour unreasonably by introducing a new ground of appeal or issue and prolong proceedings. For the reasons set out above, that was clearly the case in the appeal. I therefore find that unreasonable behaviour by the Appellant, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. 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 Mr Robert Spencer shall pay to the Peak District National Park Authority, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the adjournment of the Inquiry; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to the Mr R Spencer, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR