



Costs Decision

Hearing held on 28 March 2023

Site visit made on 27 March 2023

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Costs application in relation to Appeal Ref: APP/M9496/C/22/33307456 Land known as The Hut, Wilshaw Bottom, Hollinsclough, SK17 0RE

- 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 the Peak District National Park Authority ("the Authority") for a full award of costs against Mr Darren Allcock.
 - The application is in connection with an appeal against an enforcement notice relating to a material change of use of the land and associated operational development.
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Decision

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

Reasons

2. The costs application and arguments advanced on behalf of the applicant Authority were set out in detail in written submissions prior to the Hearing. As such, I need not repeat them here. A verbal response was made on behalf of Mr Allcock at the Hearing.
3. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably in the appeal process, and that unreasonable behaviour resulted in the other party incurring unnecessary or wasted expense. The PPG lists examples of behaviour whereby a procedural or substantive award of costs may be justified. However, the list of examples should not be regarded as exhaustive.

Grounds (c) and (d)

4. In enforcement appeals the onus of proof on matters of fact lies with the appellant and is tested on the balance of probability. Hence, it was for the appellant to show on ground (c) that the residential use of the appeal site, and the operational development carried out within it, was not a breach of planning control. Alternatively, on ground (d), that any breaches of planning control were immune from enforcement action.
5. The appellant's case was misguided. As I set out in the related appeal Decision, a new planning unit had been created by the appellant in 2019 (much larger than had ever previously existed). The new unit incorporated a sizeable area of land that was previously in agricultural use only. It materially changed the character of the land use within the new planning unit. Furthermore, no

¹ Paragraph 030 ref 16-030-20140306

credible evidence was submitted in support of the appellant's case that the new buildings and other operational development on the site did not require planning permission.

6. In respect of the ground (d) appeal there was no substantive evidence to support an argument that the breaches of planning control were immune from enforcement action due to the passage of time. Such an argument was inevitably destined to fail given the recent creation of a new planning unit and new operational development as described.
7. I accept the appellant should not be expected to understand the mechanics of planning law and Court judgments. However, he was represented by a professional agent. It should therefore have been made clear to him from the outset that his case on grounds (c) and (d) had no realistic prospect of success.
8. As such, I find that the lodging and continuation of the appeal on grounds (c) and (d) amounts to unreasonable behaviour which has resulted in wasted expense for the Authority.

Ground (f)

9. The appellant's case fundamentally lacked an understanding of the provisions of s173(4)(a) and (b) of the Act². No alternative (lesser) requirements were proposed in respect of remedying either the breach of planning control, or any injury to amenity. A suggestion of retaining hardstanding for agricultural purposes was not supported by any evidence that the appellant would use it for such purposes, either by himself or by anyone else.
10. I find that the appeal on this ground was flawed and unsupported with any reliable evidence. As such, I find that unreasonable behaviour which has resulted in wasted expense for the Authority has been demonstrated.

Ground (g)

11. For the reasons set out in the related appeal Decision the appeal on ground (g) was successful. As such, I do not find the appellant's case on this ground to constitute unreasonable behaviour resulting in wasted expense.

Conclusion

12. It was said on behalf of the appellant that the appeal matters needed careful consideration, thereby justifying a Hearing. However, I disagree. As set out in the appeal Decision, and from my reasons above, the only ground of appeal that had any prospect of success was that on ground (g). The other grounds of appeal lacked any credible evidence in relation to the facts and circumstances of the case and were not supported by any coherent arguments in relation to the law.
13. For all these reasons I consider that a partial award of costs to the Authority is justified. In this regard I note that almost the entirety of the time and wasted expense spent by the Authority was in preparing their written case, their costs application, and at the Hearing itself; all in relation to the appeals on grounds (c), (d) and (f).

² Town and Country Planning Act 1990 (as amended)

Costs Order

14. 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 Darren Allcock 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 respect of the appeal on grounds (c), (d) and (f), and the related costs application, such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Mr Darren Allcock, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Thomas Shields

INSPECTOR