



Costs Decisions

Hearing held on 24 October 2023

Site visit made on 24 October 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 06 November 2023

**Costs applications in relation to Appeal Ref: APP/P1615/C/22/3304038
Land North of Rookery Lane, 'Newjoy', Newland, Coleford, Gloucestershire,
GL16 8NJ**

Decision

1. The applications for an award of costs are partially allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. Applications were made by both the Local Planning Authority and Mr Hannaby the third party representative. They were in essence similar applications and I shall deal with them together.
4. The Council and Mr Hannaby argued that the appeal had been a waste of time. At the Hearing grounds (c), (f) and (g) were effectively conceded and ground (a) was limited to solely the question of the dog training school. No substantive evidence was provided to support this ground. There was no budget or financial plan, no business plan and no marketing. The appellant gave no idea how many dogs would be trained, how many people and vehicles might turn up, how many sessions might be held or how often. In the absence of this evidence it was impossible to measure the proposal against the Council's policies and the appeal was bound to fail.
5. The agent responded that they had not acted unreasonably. Information had been provided with regard to the dog training. The heritage issue was not part of the reasons for issuing the notice. Also the Council would have had to attend the appeal to deal with the issues of their misinterpretation of the area of the enforcement notice plan, their failure to consider the fallback and the confusion over the ground (c).
6. In my view this hearing was a waste of time, particularly following what can only be described as a 'bombshell' announcement that the appellant was living in Australia and did not intend to return to the UK. It was later clarified she would if she got planning permission for the dog training school although why that would tempt her to return was not explained. She had taken with her most of the furniture storage and sold the campervan and caravan. The notice

had in effect been complied with. As I note in the decision the only issue remaining was the ground (a) for the dog training.

7. Virtually no evidence was provided about the dog training and given it was in a particularly attractive stretch of open countryside, adjacent to a conservation area and in an AONB, it would require careful justification. The suggestion that the appellant only wanted a 'low key' use did not correspond to the assertion she would be tempted back by the grant of planning permission. The idea that everything could be left to conditions was not tenable for reason I explain in the decision. It follows that it should have been obvious there was no reasonable chance of success for the ground (a) appeal.
8. The matters that the Council apparently needed to address by appearing in person were exaggerated or misconceived. The discrepancy in the red line was minor and could easily have been dealt with in writing. The fallback position was of little relevance to the outcome as the appellant had confused the requirement in the notice to cease using the site for storage of vehicles with a blanket ban on horse lorries. The ground (c) was misconceived as nothing in the matters alleged could possibly have been considered to be ancillary to the lawful use of the land. No arguments were put forward for the ground (f) or (g).
9. The appellant has a right of appeal and this case has unfortunately dragged on since July 2022. At first it seemed she had a genuine intention to develop a smallholding on the site, although her plans were somewhat vague, but they could, nevertheless have formed the basis of a discussion. However, once her plans changed, to continue with the Hearing was unnecessary and once it became clear the site had been evacuated the other grounds more or less fell away. The unreasonable behaviour of the appellant therefore rests with pursuing the Hearing. It is unusual for a third party to receive costs, but attending a Hearing that was unnecessary is one of the possible reasons for such an award and I shall make partial costs awards to both applicants accordingly.

Costs Order on the application by the Council

10. 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 Lorna Ann Fisher shall pay to Forest of Dean District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing for and attending the Hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.

Costs Order on the application by Mr Hannaby

11. 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 Lorna Ann Fisher shall pay to Sean Hannaby, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing for and attending the Hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicants are now invited to submit to Lorna Ann Fisher, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

INSPECTOR