



Costs Decision

Inquiry held on 22 and 23 May, and 3 and 4 October 2023

Site visit made on 23 May 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Costs application in relation to APP/U1240/C/21/3288252

Land at Nuts Landing, Newman's Lane, West Moors, Ferndown, Dorset BH22 0LW

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by East Dorset District Council for a partial award of costs against Mr David Cailles.
 - The appeal was against an enforcement notice alleging the material change of use of open land for permanent residential purposes (human habitation), including stationing of a static caravan together with decking, hard surfacing for parking of vehicles, and a garden with domestic paraphernalia.
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Decision

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

Preliminary Matter

2. The costs application is an application for a partial award and relates only to the matter of the ground (a) appeal¹. Although the appeal referred to in the header above was linked to another appeal, reference APP/U1240/C/21/3288253, the ground (a) appeal on this linked appeal lapsed. I have, therefore, only referred above to the appeal that was made with a valid ground (a) appeal.

The Submissions

3. The reasons given for the costs application are summarised as follows:
 - The appeal was made on ground (a), and in doing so the case was made that planning permission ought to be granted in respect of the breach of planning control stated in the notice. Albeit brief, the appellant sets out his case on ground (a) in his statement of case. The Council prepared evidence in defence of its position on ground (a). Despite this, the appellant:
 - a. failed to provide any substantiation to the ground (a) appeal; and
 - b. waited until the first day of the inquiry to withdraw the ground (a).
4. I have summarised the appellant's response to the costs application as follows:

¹ Section 174(2)(a) of The Town and Country Planning Act 1990 as amended.

- It was not black and white as to which way the appeal would or should progress and which grounds would carry the greater merits for the appeal;
 - The ground (a) appeal was not withdrawn or abandoned. Rather, no further evidence was to be presented in relation to ground (a), in order to narrow the areas of dispute and to ensure that the Inquiry concluded in the shortest time possible; and
 - The Council were at full liberty to speak to ground (a) matters, but declined the opportunity, raising no objection at the time of the appellant's submission in relation to Ground (a).
5. The appellant made further comments, not in response to the reasons for the costs application, but instead suggesting that the applicant had itself behaved unreasonably in other matters. These do not, however, form part of a formal costs application from the appellant.

Reasons

6. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance on Appeals (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.
7. The PPG provides examples of unreasonable behaviour on the part of the appellant. This includes at paragraph 052 the withdrawal of an appeal without good reason.
8. As the costs applicant highlights, the appeal form was completed indicating that the appeal was being made on grounds, including ground (a). Subsequent to this, it is clear that the appellant reviewed his case. I say this because a ground (b) appeal was added which, along with the other grounds of appeal, including ground (a), is referred to in the appellant's statement of case and final comments. There was no indication at this stage that the ground (a) appeal was to be withdrawn or that, as the appellant suggests, no further evidence was to be presented in relation to ground (a). The opposite is true. In the appellant's final comments he says that 'business accounts and an agricultural need assessment will be provided as part of the evidence that will clearly demonstrate a very special circumstance exists'. It was, therefore, to be expected that the applicant (i.e. the Council) would prepare as it did for the ground (a) appeal.
9. Despite the above, although the evidence submitted by the appellant at the proof of evidence stage refers to matters that might be relevant to the ground (a) case (for example, the nature of the rural enterprise), this was not presented in a way that provided a meaningful case to support a ground (a) appeal.
10. At this point it is worth noting that, whilst the appeals may have been originally made without the assistance of a planning or legal professional, a planning agent was engaged early in the process². Indeed, it is likely that the appellant's case was reviewed on the appointment of the agent. It is,

² The Planning Inspectorate received an email from Mr David Cailles on 16 February 2022 confirming that White Planning and Enforcement Consultancy had been instructed.

therefore, reasonable to expect the appellant to review his case on receipt of the cost applicant's proofs of evidence, and to have understood that, in failing to present any meaningful case under ground (a), there would be little prospect of success on this ground. However, prior to the start of the inquiry, there was no indication from the appellant that appeal (a) would not be progressed.

11. As I have mentioned in the appeals decision, my note is that the appellant's legal representative confirmed at the inquiry that the ground (a) appeal was withdrawn. This is clearly the cost applicant's understanding of what happened, not least because this prompted the dismissal of its witnesses that had prepared evidence in respect of ground (a) alone, and were ready to speak to this evidence at the inquiry. In view of this, I conclude that the appellant has failed to properly review his case prior to the inquiry. This caused the late withdrawal of the ground (a) appeal, which demonstrates unreasonable behaviour on the part of the appellant.
12. Notwithstanding the above, the appellant suggests that the ground (a) appeal was not withdrawn at the inquiry. He suggests that, as he relied on the other grounds of appeal, what was said at the inquiry was that 'we would never get to Ground (a)', that 'it was right and proper to agree to present no further evidence in relation to Ground (a)...in order to narrow the areas of dispute and to ensure that the Inquiry concluded in the shortest time possible'. Because of this, the appellant suggests that the applicant was at liberty to speak to the ground (a) matters at the inquiry.
13. Even if both the applicant's and my note of what was said by the appellant's legal representative at the inquiry is incorrect and that the ground (a) appeal was still live, this does not change my conclusion that the appellant has behaved unreasonably. It is reasonable to expect the appellant's legal and planning representative to know that, when a ground of appeal is made, the proper approach is to provide evidence in support of it, regardless of whether or not it is considered that there is a stronger case to be made under another ground. The appellant may have been confident that the appeal would succeed on other grounds and that the ground (a) appeal would not need to be considered in the final decision. This does not change that a ground (a) appeal was made, regardless of whether it was only 'lightly presented' or withdrawn.
14. If the appellant is right, that he did not withdraw the ground (a) appeal and that this continued to be live, I can only conclude that he has behaved unreasonably in continuing with a ground of appeal, when he would have been alive to the prospect of little success on this ground, in view of the lack of evidence he had submitted in support of it.
15. Part of the applicant's statement of case and the entire proof of evidence of both Emily Jones and Roger Sewill were prepared in response to the ground (a) appeal. Having regard to the appellant's case on ground (a), as indicated at the statement of case and final comments stage, I do not consider this evidence to be an excessive response. It is wholly unreasonable to suggest that the cost applicant's response to the ground (a) appeal should have been tempered because the appellant's case was only 'lightly presented'. I say this, not least because, when submitting its evidence, the applicant would not have known the limited extent of evidence that was to be provided by the appellant.
16. Furthermore, I consider neither Emily Jones' nor Roger Sewill's attendance at the inquiry to be unreasonable, despite the lack of written evidence submitted

by the appellant on the matter of the ground (a) appeal prior to the opening of the inquiry. Their attendance at the inquiry was to be expected. The appellant's approach at the inquiry to his ground (a) appeal (i.e. withdrawn or otherwise) was not known until the inquiry had opened.

17. Having regard to all of the above, I find that the appellant has behaved unreasonably and that this has resulted in unnecessary or wasted expense on the part of the costs applicant in the appeal process. Accordingly, an award of costs is justified.

Costs Order

18. 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 David Cailes shall pay to East Dorset District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in response to the appeal made under section 174(2)(a) of The Town and Country Planning Act 1990 as amended; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Mr David Cailes, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR