



Costs Decisions

Hearing held on 18 April & 24 May 2023

Site visit made on 17 April & 24 May 2023

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 13 December 2023

Costs applications in relation to Appeals A & B Refs:

APP/C1760/C/22/3296158 & 3296159

Barn Springs, Clatford Lodge, Anna Valley, Andover, Hampshire SP11 7DL

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Application A is made by Test Valley Borough Council (the Council) for a partial award of costs against Mr John Nugent & Mrs Jayne Hassall (the appellants).
 - Application B is made by the appellants for a partial award of costs against the Council.
 - The appeal was against an enforcement notice alleging: without planning permission, (a) the making of a material change in use of land to a residential use and, (b) the carrying out of associated building operations involving various works and buildings/structures.
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Decisions

1. Both applications for an award of costs are refused.

Preliminary Matters

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.

Application A: By the Council against the Appellants

The Council's Case

3. The Council's case is that, contrary to the Enforcement Appeals Procedural Guidance and to PINS' several emails regarding this case, the appellants presented an entirely new set of evidence (in a new Appeal Statement) on 31 March – effectively a new case – only just before the start of Hearing. In particular, and contrary to their original statement, the appellants now maintain that there is a fallback position in that Building 1 has been used residentially and the land has been used for domestic and commercial storage; this was not their case originally when the appeal was first submitted. To back up this new case new evidence in the form of new statutory declarations and a Landscape and Visual Impact Assessment have been supplied.
4. The Council maintain that this is unreasonable behaviour contrary to the Guidance and PINS's clear instructions. They argue that this has led to wasted expense in that the Hearing on 18 April had to be adjourned for this new material to be placed on the Council website and consulted on with the neighbours, who had not had a chance to comment on it. The wasted expense specifically relates to the time taken for officers to properly consider the

appellants' new case, publish it on the website and consult on it with neighbours, legal advice necessary in relation to it, the expense of writing to PINS about it, the expense of cancelling the second day's booking of the conference room on 19 April (since it could not be re-hired out at such short notice) and its re-booking for the 24 May, and the expense of writing its costs application.

The Appellants' Response

5. The appellants acknowledge that their mixed-use fallback case arose during discussions with its appeal team (including Mrs Hassall's sons) when Counsel was appointed at the stage the appeal was switched to an Inquiry, and maintains that not to have mentioned this information would have prejudiced a fair and balanced decision. This information was not presented initially because the initial appeal was lodged very quickly (in view of the deadline for appealing) and the appellant team were simply not aware of it in detail at the time, notwithstanding that it was mentioned in Mrs Hassall's 'personal statement' initially.
6. They point out that in their initial April 2022 statement it was indicated that they intended to submit an LVIA because the notice alleged harmful impact to the character and appearance of the open countryside and cited policies associated with landscape and visual impact.
7. They also argue that they were quite entitled to submit an appeal statement containing their fallback argument in view of the PINS email of 3 February, which stated the document that could be submitted when the procedure was changed back to a Hearing was '*a statement to cover what's not already presented on the file since final comments.*' They say that is exactly what they did.
8. They say that their latter appeal statement was not sent in late but on time and the fact that it was not forwarded to the Council until 31 March was PINS's and not their responsibility.

Reasons

9. It is easy to understand how a certain amount of confusion has arisen in these appeals due to the fact that there has been two changes of procedure by PINS, first by changing the appellants' initial request (on 2 April 2022, when the appeal was first submitted) for a Hearing to an Inquiry and then, in January 2023, back to a Hearing, given the amount of correspondence arising from such changes in the appeal procedure.
10. However, I consider that PINS correspondence is clear that the parties' statements that could be submitted at the final stage when the appeals had reverted to a Hearing should only have addressed issues that had not already been covered in the previous statements of case. What this meant was, for instance an update on the nitrate neutrality issue, including submission of the appellants' Nitrate Neutrality Statement. What PINS did not mean was that the appellants could, in effect, amend their appeal to allege that the land had always been used for residential purposes.
11. I do not accept the appellants' argument that because its initial appeal was done in a hurry that it was entitled to expand its case later, because it has long been established that an appeal against an enforcement notice must be made

within 28 days. The appellants' case should have been stated fully by the end of the 6-week period, given they have been professionally represented all through the course of these appeals.

12. However, I can understand them changing their case to allege that there had been residential use on the land in light of subsequent discussion with Mrs Hassall's sons and their advocate, and can understand why in good faith, given what PINS said in its correspondence, that they considered this would be acceptable. In any case and regardless of that, given the possibility of them losing their home, I can understand why they felt obliged to put their full case forward, as it was in March 2023.
13. I agree that their March 2023 amended Appeal Statement was not submitted late. It was unfortunate that, contrary to most of the rest of their correspondence with PINS, that the email submitting it was not copied to the Council, but that was inadvertent and not deliberate.
14. In summary, cases at appeal should not be changed or expanded beyond what was originally set out, by the 6-week stage, through an appellant's original statement of case. That has been done here contrary to the Procedural Guidance and, in my view, contrary to PINS correspondence regarding these appeals. However, it is easy to understand why the appellants in this case believed they could change their case at appeal.
15. Notwithstanding that, even if they didn't do so in good faith, it is understandable why they wanted to put their full case in March 2023 in advance of the event itself, so that the Council would fully understand their case in advance of the Hearing, so that it would have the full opportunity to consider it and address it there, which is what it did. For these reasons I do not find the appellants' behaviour unreasonable. Consequently, I do not need to assess whether the appellants' actions have led to wasted expense by the Council.

Application B: By the Appellants against the Council

The Appellants' Case

16. The appellants' case is that the adjournment of the Hearing was attributed directly to the Council's failure to publicise its March 2023 Appeal Statement and the documents attached to it, including its Nitrate Neutrality Statement, LVIA and the four statutory declarations by the appellants and Mrs Hassall's sons. Although the appellants understand that the Council petitioned PINS not to accept these documents, for the reasons set out in Application A above, PINS did not reject them and so the Council should reasonably have published them on its website and consulted neighbouring properties accordingly as soon as it received them, which would have obviated the need for the adjournment. Consequently, this behaviour was unreasonable, not least since the Council did not bother to contact PINS by telephone to chase up its concerns.
17. Regardless of the arguments about the amended case at appeal, the appellants argue that there were simply no grounds at all for not publishing the Nitrate Neutrality Statement. They argue that this was clearly unreasonable in itself.
18. This failure of the Council to publicise the appellants' March 2023 appeal statement and documents led directly to the adjournment of the Hearing from 18 April to 24 May in order that neighbours could respond to the appellants'

case. This has led to wasted expense by way of necessitating additional travel, hotel and subsistence costs by the appellants' team.

The Council's Response

19. The Council argues that it contested the appellants' new evidence with PINS but had no response. Its case is, essentially, that since the appellants had made a new case at appeal contrary to PINS instructions, that it could not publicise such documents until it had heard back from PINS one way or the other – that they had either been accepted or rejected. Since it didn't hear back until the Hearing, when I confirmed that I would accept the appellants' March 2023 documents, its response was quite reasonable. It also points out that the appellants costs claim was not submitted by the end of the Hearing, and is therefore out of time.
20. In regard to the nitrate neutrality issues specifically, the Council say that because the Nitrate Neutrality Statement (NNS) was just one of the documents attached to the appellants' challengeable March Appeal Statement, it was not unreasonable to not separate it from the appellants' wider case. Even if this is considered to be unreasonable, the fact that the nitrate neutrality issue was dealt with on Day 1 of the Hearing meant that the appellants' nitrate specialist did not subsequently need to attend the second day at all, and so there were no wasted costs resulting from failure to publicise the NNS.

Reasons

21. I accept that the Council believed that the appellant was acting contrary to Procedural Guidance and in breach of PINS correspondence. It was therefore entitled to ask the Inspectorate the question as to whether or not PINS was prepared to accept the appellants' March 2023 Statement and appended documents before deciding whether to publicise them on its website and consult interested parties. Because it did not receive a response, I accept that its actions were not unreasonable. Consequently, I do not need to assess whether the Council's actions have led to wasted expense by the appellants. In terms of the timing of the appellants' costs application, I accept the appellants' position that they needed to read and understand the Council's application before deciding on whether to submit a costs application themselves.
22. In regard to the nitrate neutrality issue, I understand the Council's position but agree with the appellants that its failure to publicise the NNS meant that the neighbouring residents who attended Day 1 of the Hearing had no chance to comment on this document, which itself was not part of the 'expanded case' argument between the main parties. But since the adjournment to May would in any case have had to take place so the residents could read and comment on the totality of the appellants' March 2023 Appeal Statement, the failure to publicise the NNS in advance of the Hearing's commencement has not led to any additional expenses.

Conclusions

23. In both applications therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and no awards of costs are warranted.

Nick Fagan, INSPECTOR