



Costs Decisions

Inquiry held on 7 February and 21, 22 November 2023

Site visit made on 21 November 2023

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

**Costs applications in relation to Appeals Ref: APP/M3645/C/19/3239288, APP/M3645/C/19/3239286, APP/M3645/C/19/3239279, APP/M3645/C/19/3239283, APP/M3645/W/20/3245683
Land at Swallows End, Crab Hill Lane, South Nutfield, Surrey, RH1 5PG
(also known as Plot 1 The Paddocks and Plot 2 The Paddocks)**

- The applications are made under the Town and Country Planning Act 1990, sections 78, 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mr Mark Lewis for partial and full awards of costs against Tandridge District Council.
 - The inquiry was in connection with appeals against enforcement notices alleging operational development and material changes in the use of land and an appeal against the refusal of planning permission for a gypsy pitch, with associated hardstanding and a utility/dayroom.
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DECISIONS

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

REASONS

Procedural matters

2. The costs applications made by Mr Mark Lewis and final comments were submitted in writing. The response by Tandridge District Council also was made in writing.
3. The appeals initially proceeded to a hearing that opened on 18 November 2021. The hearing was closed before evidence was discussed and the procedure was changed to an inquiry. I was appointed as the Inspector during the lead-in period to the inquiry. The procedural issues that arose in respect of the determination of appeals against enforcement notices EN21 and EN22 are summarised in the Appeal Decisions and will not be repeated here.
4. Certain matters raised in the costs applications are common to all appeals, while there are other matters that are discrete to specific appeals.

Reasons

5. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.

Prior investigation

6. Planning Practice Guidance states for enforcement action local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate. The appellant submitted the Council failed in this regard in respect of all four enforcement notices.
7. The Council's hearing statement showed that the drafting of the notices took account of the planning history of the site and adjacent land, as well as information previously provided by the appellant. The Enforcement Proceedings Authorisation for Notices EN23 and EN24 also showed that reliance was placed on information within a planning application for a two pitch site on Plot 2 that was refused permission in March 2019¹.
8. The definition of the Land on the plans attached to the notices was based on a copy of the title plan from the Land Registry. It is common practice for local planning authorities to rely on Land Registry information when drafting enforcement notices. The Council could not reasonably be expected to know of a conveyancing error before issuing the notices on 5 September 2019. The northern boundary of the Land affected by Notices EN23 and EN24 was consistent with the location plan submitted with the planning application in August 2019 (ref TA/2019/1524)². The appellant occupied land outside the recorded ownership, which probably was not easy to establish on a site visit. In determining the appeals by Ms Chambers the discrepancy in respect of the southern boundary of the appellant's land was not picked up in the decisions on Notices EN21 and EN22, an indication any error was not obvious. The marked approximate locations of the outbuildings (EN24) were consistent with the northern boundary line of the Land on the notice plan, which subsequently has been shown to be in error.
9. The Council adequately explained why the description of the alleged breach in Notice EN23 was considered as a single primary use and not a mixed use. Even though I have decided the description should be corrected, this outcome is not attributable to a lack of thoroughness of the investigations.
10. In conclusion, the Council relied on appropriate sources of information when drafting the notices. Unreasonable behaviour has not been demonstrated in respect of prior investigation.

Prompt review

11. With reference to Planning Practice Guidance a local planning authority is at risk of an award of costs if they do not review their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination). The same principle of prompt review would apply to appeals against enforcement notices.

¹ Appellant's Appendix A6

² Appellant's Appendix A7 Drawing No. 19_1005_001. The plan outlined in blue the land owned by the appellant adjoining the red line application site.

12. The appellant's hearing statement submitted on 8 September 2020 set out why the four notices were considered inaccurate. The Council responded to the ground (b) appeals in its Final Comments and explained why it considered no corrections to the notices were necessary. The Land Registry title plan was one of the considerations.
13. The inquiry in February 2023 was an appropriate opportunity to review the accuracy of the notices. Following a constructive discussion, the Council proposed corrections, which were discussed and confirmed at the November inquiry.
14. The Council reviewed its case throughout the proceedings and I am satisfied the Council's behaviour was not unreasonable.

Appeals relating to Plot 1 The Paddocks (the prior appeals)

15. There were four appeals against Notices EN21 and EN22 – two were by Mr Lewis³ and two were by Ms Chambers⁴. The appellant refers to the appeals by Ms Chambers as the prior appeals.
16. The appellant's initial summary identified the unreasonable behaviour of the Council as a failure to advise the parties of the prior appeals to allow appropriate steps to be taken before the issue of any decision. Subsequently, the appellant clarified the claim. The prior appeals should not have been determined before the appeals by the appellant against Notices EN21 and EN22. The Council, unlike the appellant, was fully aware of the proceedings on both sets of appeals and failed to alert the Planning Inspectorate of the need not to make any determination on the prior appeals until the appellant's evidence had been heard.
17. The timing and date of determination of the prior appeals were not the responsibility of the Council. The Council was under no obligation to alert the Planning Inspectorate that all evidence directed at Notices EN21 and EN22 should be heard before decisions were issued on the prior appeals. The onus was not on the Council to refer to the appellant's case on Notices EN21 and EN22 at the hearing in April 2021. The Council has demonstrated that the appellant was given notice of the prior appeals before the April hearing. There was no unreasonable behaviour by the Council.
18. A second matter raised was the Council's failure to cooperate by not withdrawing Notices EN21 and EN22. Under section 173A(1) of the 1990 Act the Council has a discretionary power to withdraw an enforcement notice. The withdrawal of the notices was regarded by the appellant as a potential means of resolving the difficulties related to the 'early' determination of the prior appeals. However, this situation was not of the Council's making. The decision whether to exercise the power rests with the Council. The Council on more than one occasion stated there was no intention to withdraw the notices. That response and the decision not to withdraw the two notices are consistent with the Council's opinion on the ability to further correct the notices through the current appeals. On this matter a lack of co-operation on the Council's part did not occur and no unreasonable behaviour is demonstrated.

³ Appeal references APP/M3645/C/19/3239279 and APP/M3645/C/19/3239283

⁴ The reference numbers of the appeals by Ms Chambers are APP/M3645/C/19/3239090 and APP/M3645/C/19/3239094.

Gypsy status

19. Gypsy/Traveller status is a relevant consideration, bearing in mind the description of the development in the deemed planning application and the section 78 appeal and the history of the appellant's occupation of the site. Traveller status affects the policy to be applied and has implications for human rights and public sector equality duty considerations. It is likely to be relevant to the Green Belt test of very special circumstances. The Council, when considering personal circumstances, referenced the appellant's case being predicated on the need for traveller sites in Tandridge District and a lack of alternative sites, which would inform the planning balance and conclusion on very special circumstances. Evidence to address the matter was rightly sought.
20. A draft witness statement, unsigned, undated and without exhibits was submitted by the appellant on 8 September 2020⁵. A signed witness statement dated 18 November 2021 was submitted at the hearing. A draft witness statement, unsigned and undated, supported by exhibits, was submitted with the appellant's proof on 19 January 2023. An updated witness statement signed and dated 21 November 2023 (with exhibits) was submitted at the inquiry.
21. A witness statement that is in draft and unsigned has little weight. The exhibits were important supporting information and included a helpful letter from the Gypsy Cooperative. In view of the disagreement on facts the Inspector decided at the November hearing that the matter should be tested in cross-examination under oath or solemn affirmation. The Inspector's Note recorded the main parties accepted this decision⁶. On the opening morning of the February inquiry, by which time the exhibits had been submitted, the Council stated there were no questions for the appellant if he affirmed the contents of the statement was true. Subsequently in the first signed statement of common ground (dated 5 and 17 May 2023) the parties accepted the occupants of the site have gypsy/traveller status in view of the additional evidence submitted. The chronology shows the Council kept the matter under review.
22. The acceptance of Gypsy/Traveller status and the scope of evidence required will be fact sensitive and will vary case by case. The content and level of detail within personal statements will vary also, as will the need for supporting documents. It is not possible to conclude that the Council's approach on the Connors appeal was inconsistent with the approach followed in the current appeals. The Council clearly was alert to the importance of consistency, referring in its Final Comments⁷ to the supporting information supplied by travellers seeking planning permission for sites in Tandridge District.

Deadlines

23. Delay in providing information or other failure to adhere to deadlines is one of the examples of unreasonable behaviour identified by the Planning Practice Guidance which may result in an award of costs against a local planning authority.

⁵ Appendix A.20 to Hearing Statement

⁶ At the inquiry on 6 February the appellant's agent stated he did not agree, rather he did not object.

⁷ The Council's comments received on 29 September 2020 with reference to paragraphs 238 to 281 of the appellant's Hearing statement.

24. Confirmation of the inquiry dates 7 and 8 February 2023 was sent to the parties by the Planning Inspectorate on 9 August 2022. The appellant's submissions regarding deadlines focused on the period between January 2023 and April 2023.
25. In a Pre-Inquiry Note issued on 4 January 2023 the parties were requested to submit updated evidence no later than 19 January 2023. No evidence was received from the Council. The Planning Inspectorate contacted the Council and the deadline was extended to 31 January. Initially the appellant's proof and documents were not sent by the Planning Inspectorate to the Council because the usual practice is to exchange evidence at the same time in the interests of fairness. Once the extended deadline had passed the appellant's updated evidence was forwarded to the Council on 2 February.
26. The inquiry opened as arranged on 7 February. The Council and the appellant requested an adjournment for different reasons. Various matters were discussed before the inquiry was adjourned. It was agreed that the Council should submit its updated evidence no later than 10 March 2023. The statement of common ground was to be updated to take account of the Council's further evidence and an agreed statement was to be submitted no later than 21 April 2023. The Council's evidence was submitted on 6 April and on 8 April. The statement of common ground was signed by the Council on 5 May and by the appellant on 17 May.
27. The facts show the Council did not meet the deadlines set for the submission of updated evidence. The Council submitted the Planning Inspectorate emailed the January Pre-Inquiry Note to Buckinghamshire Council, and it only became aware of the deadline date on 24 January. The Council accepted the 10 March 2023 deadline was not met but described this as hardly uncommon and did not accept it amounted to unreasonable behaviour.
28. The Planning Inspectorate believes the only email sent to Buckinghamshire Council was an email dated 27 January. The appellant considered the Council, in an email dated 24 January, acknowledged receipt of the covering letter dated 4 January with the January Pre-Inquiry Note. In my view such a firm conclusion cannot be drawn when read in conjunction with the Council's Costs response – the Council say it became aware of the 4 January letter through later communications and correspondence.
29. There is conflicting evidence on the awareness of the Council on the initial deadlines for the proofs. As it turned out the consequences of the lack of updated proofs from the Council in January/February made very little difference to the inquiry proceedings in February. I had decided to open the inquiry despite no updated proofs from the Council because there were matters that merited consideration and clarification in order to move forward and in fairness to interested parties who may attend. As a result the Council's updated proofs when submitted in April were focused and informed by the discussion, particularly on the proposed corrections to the notices.
30. The March date for proofs was agreed at the inquiry and no potential difficulties were raised by the Council at that time or nearer the deadline date. The Planning Inspectorate contacted the Council to chase the matter up after the deadline. The Council did not advise the Planning Inspectorate of a reason for the delay until 28 March, when a date of 7 April was given for the Council's

revised evidence. The failure to meet the March deadline was unreasonable behaviour. The lateness of the proofs was followed up by the Planning Inspectorate, the appellant was kept informed and the date for the statement of common ground was put back. Arrangements to resume the inquiry were progressed after receipt of all the outstanding documents, including the statement of common ground. The unreasonable behaviour did not result in unnecessary or wasted expense.

Events

31. According to the Inspector's note, the hearing on 21 November 2021 was closed at about midday because the Inspector decided the procedure for determining the appeals should change to an inquiry to deal with the dispute over gypsy status. Before the event was closed the Inspector made observations on matters that would benefit from attention before the inquiry. No substantive evidence appears to have been discussed and for various reasons a new Inspector was appointed for the inquiry. The Inspector's note of the hearing does not indicate the half day was wasted. No unreasonable behaviour by the Council has been demonstrated.
32. The inquiry sat for just over half a day on 7 February. Even if the Council had submitted its updated proofs in time, the inquiry probably would have adjourned to allow time for full documentation and consideration of the proposed corrections to the notices, the finalisation of a statement of common ground and to enable further reflection on the position with Notices EN21 and EN22.
33. The inquiry sat for one and half days over 21 and 22 November, which included the site visit. The length was not due to unreasonable behaviour by the Council in investigation and drafting of the notices. The second half day consisted of a discussion on the evidence on need for traveller sites (45 minutes) and planning conditions (about 2 hours). Sensibly these matters could not have been concluded on day 1. The additional time allowed both parties to present their case and gave the opportunity for questions. The discussion on conditions would have been shorter if the topic had been addressed fully by both parties through the statement of common ground.

Summary and Conclusions

34. I have decided to quash Notice EN23 because it is not possible to correct the description of the alleged breach of planning control and the plan attached to the notice without causing injustice. However, the errors and misdescription in the notice were not because of inadequate investigation by the Council or a failure to review their case promptly. The inquiry was necessary to explore the respective cases thoroughly and come to an informed conclusion. No unreasonable behaviour has been demonstrated and hence no unnecessary or wasted expense has been incurred as a result.
35. I have concluded Notice EN24 is not a nullity but that necessary corrections to the notice cannot be carried out without causing injustice to the appellant. The defects in the notice were not because of inadequate investigation by the Council or a failure to review their case promptly. No unreasonable behaviour has been demonstrated and hence no unnecessary or wasted expense was incurred as a result.

36. The corrections to the boundary of the Land on the plan attached to Notice EN21 and Notice EN22 were not because of inadequate investigation by the Council or a failure to review their case promptly. The issues arising from the determination of the prior appeals in July 2021 without considering the appeals by Mr Lewis were not due to unreasonable behaviour on the part of the Council. The Council's decision not to withdraw the two notices was not unreasonable.
37. The hearing on 21 November 2021 was closed by the Inspector because the Inspector decided the disputed evidence of gypsy status should be examined under oath or solemn affirmation, which could only be done at an inquiry. The change in the procedure was not attributable to the Council. No unreasonable behaviour by the Council has been demonstrated when account is taken of the form of the appellant's evidence and the timing of its submission.
38. The length of the inquiry was necessary in order to (a) examine the quite complicated issues related to the four notices and to respond to my questions set out in Inquiry Note 4, and (b) to discuss planning matters related to need and planning conditions for three developments on a without prejudice basis. No unreasonable behaviour by the Council has been demonstrated.

Conclusion

39. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is not justified.

Diane Lewis

INSPECTOR