



Costs Decision

Inquiry held on 9 & 12 January 2024

Site visit made on 10 January 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Costs application in relation to Appeal Ref: APP/D1265/X/23/3321316 Heathlands Football Club, Lower Common Lane, Three Legged Cross BH21 6RX

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Dorset Council for a full award of costs against Mr John Bignell.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for the use of the former sports pavilion as a dwellinghouse.
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Decision

1. The application for an award of costs is refused.

The submissions for Dorset Council

2. The application was submitted in writing. The main points were:
3. In making the application, the appellant, his family and his agent have performed a complete volte-face, giving evidence on oath which directly contradicted the representations made over many years as to the use of the Pavilion. No reasonable explanation can be offered for the contradiction. It is manifestly inaccurate or untrue. It was unreasonable for the appellant to have made the application on this basis at all. Had he not done so, the entire costs of the appeal would have been avoided.
4. If weight is given to the appellant's new account, unreasonable behaviour has still occurred. The previous representations were plainly false and deliberately so. Had they not been false, the Council would have been able to enforce against the unlawful use at the latest in October 2011 when the appellant completed a planning contravention notice (PCN). This application for a certificate of existing lawful use or development (LDC) would never have been made and the appeal would never have arisen.
5. In final, verbal, response to the appellant's submissions, the Council confirmed that they do not rely upon the withdrawal of the older application as grounds for costs. Much of the evidence in response goes to the merits of the case, but does not address the costs application. If the appellant did conceal the use from his agent, then there is an even stronger case that the appeal would not have occurred if full disclosure had happened earlier. If the unreasonable behaviour had not occurred, then the appeal would not have happened.

The response for Mr Bignell

6. The response was made orally at the inquiry. The main points were:

7. It was not unreasonable to withdraw the parallel appeal as they were basically the same in form and character. Two appeals would have resulted in no additional work.
8. It is untrue that the appellant misled the Inspector in the 2011 appeal, as can be seen from the Inspector's comments. 'Belonging to' and 'occupied by' do not have the same meaning. Just because one owns a caravan does not mean that they occupy it. Mr Bignell was unable to read and complete the PCN form himself so did not knowingly and deliberately sign it in order to mislead as he could not understand what he was signing. It is not true to say that the valuation report identified the Pavilion as a day room. If it did, then it should not have been factored into the valuation for the purposes of calculating contributions. The appellant was not unreasonable and did not intend to deceive the Council.
9. Mrs Bignell did not mislead the Inspector in the 2016 appeal. The Inspector did refer to 4 caravans, but these were described as 2 touring caravans and 2 mobile homes. There is a difference between mobile homes and touring caravans and it was not intended to mislead. In respect of the 2021 emails and photographs, the identity of Joanna Smith cannot be confirmed. Neither the appellant nor his agent have permitted the so-called Joanna Smith to take photographs or send correspondence. To our knowledge, only two people have taken internal photographs – the Council's witness and another officer.
10. The appellant maintains that if the family were forced to leave the site they would have to stay together and comments to that effect were reasonable. The appellant's agent was not unreasonable when he did not relay an email from the Council to the appellant – there are cases where emails get lost and this was one.
11. It is not unreasonable that the appellant's agent did not know that the family were occupying the Pavilion as a dwellinghouse. He was not informed and, in any case, it is not his duty to be an informant for the Council. It is clear that the appellant concealed the use from their agent and there is nothing he could have done about it. The agent only visits occasionally in connection with planning business and has no local connection to the area.

Reasons

12. 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.
13. The original application to the Council was imprecise and ambiguous in demonstrating that the use of the pavilion began in 2009. Moreover, the appellant has been unable to satisfactorily reconcile contradictions that this causes with evidence submitted by the Council. That, however, is not in itself unreasonable behaviour, as judgement on the available evidence is required.
14. Notwithstanding the above and my ultimate conclusion on the date from which use as a dwellinghouse can be demonstrated, the appellant has remained of the position that the use began in 2009. If that were the case, to avoid detection, it was necessary for the appellant to misdirect the Council, concealing the true use of the site on a number of occasions. Moreover, further

concealment was required to avoid detection in the 4 year period following the date that I have found that the use was more likely than not to have commenced. Such behaviour can only be described as unreasonable.

15. However, while my Decision on this appeal turned on the matter of deliberate concealment, I have not found that all of the alleged inconsistencies raised by the Council were contradictions or acts of concealment. They were, nevertheless, matters that may still have led to the refusal of the application and, collectively, they all contribute to the Council's case casting doubt on the appellant's version of events and about concealment. Even without the acts of deliberate concealment that I have identified in my main decision, given the extent of alleged inconsistencies, I find that, on the balance of probabilities, the Council may well have still refused the application for similar reasons, such that an appeal and its associated costs would not have been avoided.
16. Similarly, given the picture of use at the site that has been painted since 2009, it is far from clear that the Council would have served an enforcement notice in the intervening years, if indeed the use were ongoing at that time. In any case, while such formal action would have likely avoided an application for an LDC in the first place, an award of costs must be linked to unreasonable behaviour in these appeal proceedings rather than speculation over what alternative events may have occurred if the appellant had behaved differently in the past.
17. On that basis, I find that it has not been demonstrated that the unreasonable behaviour has led to avoidable costs in this appeal process. Neither a full, nor partial award of costs is, therefore, warranted.
18. The application for an award of costs is refused.

M Bale

INSPECTOR