The Planning Inspectorate

Costs Decision

Hearing held on 14 May 2024

Site visit made on 21 February 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2024

Costs application 1 in relation to:
Appeal A Ref: APP/J9497/C/22/3311609; and
Appeal B Ref: APP/J9497/C/22/3311610
Land at Robertsacre Farm, Bridford, Exeter, Devon EX6 7HH

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Jonathan Roberts (Appeal A) and Ms Michelle Sablon-Roberts (Appeal B) for a full award of costs against Dartmoor National Park Authority.
- The appeal was against an enforcement notice alleging the material change of use of the Land (following the erection of a new building) to use as a dwellinghouse known as The Old Parlour shown edged red and marked "P" on the Plan ("The Old Parlour").

Costs application 2 in relation to:
Appeal C Ref: APP/J9497/C/22/3311959
Appeal D Ref: APP/J9497/C/22/3311960
Land at Robertsacre Farm, Bridford, Exeter, Devon EX6 7HH

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Jonathan Roberts (Appeal C) and Ms Michelle Sablon-Roberts (Appeal D) for a full award of costs against Dartmoor National Park Authority.
- The appeal was against an enforcement notice alleging the material change of use of the Land to residential use (following the erection of a new building on the Land, such building known as The Sheepshed and shown edged red and marked "S" on the Plan ("The Sheepshed").

Decision 1

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

Decision 2

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

Preliminary Matters

3. The costs applications were made prior to the hearing at the time when the cases were proceeding by way of written representations. The decision to change the procedure to a hearing due to the issues that are raised was made by the Planning Inspectorate.

Reasons

4. 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.

5. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and to follow good practice. It is aimed at encouraging local planning authorities to properly exercise their development management responsibilities as well as discouraging unnecessary appeals.

6. The costs regime relates to the behaviour of parties during the appeal process. The PPG also sets out some circumstances when the events leading to the appeal may be taken into account in assessing the reasonableness.

7. The National Planning Policy Framework (the Framework) makes it clear that effective enforcement is important to maintain public confidence in the planning system. Enforcement action is however discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.

Appeals A and B

8. The background to the issuing of the notice included applications submitted in an attempt regularise or try and establish the lawfulness of The Old Parlour. A Lawful Development Certificate (LDC) application was refused and an appeal was dismissed in relation to that on 1 August 2022[1]. That established that a breach of planning control had occurred at the appeal site involving the use of the Old Parlour as a dwelling.

9. The National Park Authority (NPA) therefore had, in the public interest, to try and ensure that control was retained over the breach of planning control. A planning application was partially submitted with key information lacking on 9 September 2022 (it was not registered until 12 December 2022). It was not unreasonable to issue the enforcement notice before that application was determined because its submission would not 'stop the clock' of the time limits for taking enforcement action as set out in s171B of the Act. Whether it was expedient for the NPA to issue the notices is not, it has been held, within the jurisdiction of planning inspectors. To challenge such decisions is a matter for Judicial Review and I am aware that the applicants failed in that challenge.

10. In determining the planning application, the evidence provided by the appellant with respect to the agricultural justification was limited particularly with respect to the financial details. I am not dealing here with the reasonableness or otherwise of how that application was considered. However, the NPA in taking the advice of their advisor on those matters has acted reasonably in accepting through the appeal process that there is a functional need for a worker to live on the site. The NPA I see from the report, instructed their advisor on 26 October 2022 after the notices were issued.

11. Previous decisions for an agricultural workers' dwelling at the site were taken on the basis of material considerations relevant at that time. The NPA were correct to make their decisions based on the Dartmoor Local Plan 2018-2036, adopted December 2021 (LP) as a starting point. My decision has also confirmed that the development does not comply with the LP policies. Even though some other considerations weigh in favour of approving the dwelling for a rural worker on the site, they did not outweigh that conflict with the LP as a whole. These are matters that require careful balancing and are not clear cut.

[1] APP/J9497/X/21/3286589

12. The NPA acted proportionately in the manner that they weighed up those material considerations, including the Human Rights and the United Nations Convention on the Rights of Child. The Members of the NPA Development Management Committee were made aware of the applicant's family circumstances including the birth of a second child in June 2022, prior to the issuing of the notice.

Appeals C and D

13. These appeals were on grounds (b) and (f). My decision only had to go as far as ground (b) that the matters alleged had not occurred. There is agreement by the applicants that the use had occurred, but that it had ceased by the time the notice was issued. As I have explained in my decision, whether the residential use was taking place when the notice was issued, is a matter of fact and degree. I can understand why the NPA acted cautiously where there is such a judgement to be made which is not clear-cut. They did not act disproportionately or unreasonably in doing so.

All of the Appeals

14. Both of the enforcement notices required the demolition of the buildings involved in addition to the cessation of their use. The Inspector in the LDC appeal relating to the Old Parlour indicated that the buildings had been completed for more than 4 years. Whether the notices could go that far is a matter to consider in light of case-law which helps to clarify the statutory position set out in the Act. That LDC did not deal with the Sheep Shed to which appeals C and D relate but the context is clear in indicating the building was constructed around the same time.

15. To challenge the requirements of a notice, an Appeal can be brought on ground (f), that the steps required exceed what is necessary to achieve the purpose of the notice. However, clearly the requirements of notices need to be reasonable and based upon a proper understanding of the case law and statute. I have referred in the appeal decisions to the relevant case-law which is referred to by both main parties. To briefly rehearse this here, The 'Murfitt[2]' case established a principle that when enforcing against material changes of use, a notice may require that 'ancillary' or 'incidental' works are removed. A limitation of the Murfitt principle is however where the operational development is itself the source of or fundamental to the change of use rather than being ancillary or incidental to it. This is a difficult area to apply to the circumstances of each case. Indeed, when I wrote out to both main parties informing them of another case 'Caldwell[3]', I considered that it may help to clarify the situation. In that case an Inspector was found to have mis-applied the Murfitt principle which demonstrates that it is a difficult area of judgement to make. The NPA accepted the point in the hearing in relation to both notices and within a Statement of Common Ground. The hearing time was used constructively to decide how the notices needed to be corrected, under the provisions of the appeal under ground (f). The PPG encourages the review of cases in this way to narrow down the issues.

16. I have explained above that it is not for an inspector in an appeal to consider the expediency of taking enforcement action. That is a matter for the NPA. In

[2] Murfitt v SSE & East Cambridgeshire CC [1980] JPL 598
[3] Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council [2024] EWCA Civ

both cases, the NPA acted cautiously but with some foundation to their case. The Development Management Committee were made aware of changing family circumstances in weighing up the expediency of taking enforcement action. The NPA acted proportionately in responding to what were breaches of planning control for which there was a chance they could have become immune from enforcement action if action was not taken. Given my consideration of the main issues in the appeal it is clear that losing control of these matters in such a situation would not have been in the public interest because it would not have been compliant with the development plan as a whole.

Conclusion

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in either of the applications for costs.

Andy Harwood

INSPECTOR