Planning Inspectorate

Costs Decision

Hearing held on 5 November 2024

Site visit made on 5 November 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2024

Costs application in relation to Appeal A Ref: APP/J9497/C/24/3343435
Elliotts Farm, Buckland-In-The-Moor, Ashburton, NEWTON ABBOT, TQ13 7HP

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Dartmoor National Park Authority for a full award of costs against Mr Terence Andrew.
- The appeal was against an enforcement notice alleging the material change of use of land from agriculture, to agriculture and the siting and storage of a double-decker bus.

Costs application in relation to Appeal B Ref: APP/J9497/W/24/3343564
Elliotts Farm, Buckland-In-The-Moor, Ashburton, NEWTON ABBOT, TQ13 7HP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Dartmoor National Park Authority for a full award of costs against Mr Terence Andrew.
- The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended for an alteration to a hay barn.

Decision – Appeal A and Appeal B

1. The applications for an award of costs are allowed in the terms set out below.

The Submissions

2. The costs applicant (the Council) have made its costs application in relation to both of the above-mentioned appeals. I have considered these separately below. The Council's costs application and the appellant's response to this were made in writing following the close of the hearing.

3. Elements of the appellant's response to the costs application respond to the case made by the Council in respect of the appeals, rather than in response to the case made by the Council in its costs application. I have only had regard to the appellant's representations in so far as they are relevant to the costs application. To be clear, I have not had regard to these representations in my determination of the appeals.

Relevant Guidance

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) on Appeals 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. Paragraphs 052 and 053 of the PPG provides examples of unreasonable behaviour on the part of the appellant. Some that might be relevant to this costs application include:

   - introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen;
   - prolonging the proceedings by introducing a new ground of appeal or issue;
   - providing information that is shown to be manifestly inaccurate or untrue;
   - deliberately concealing relevant evidence at planning application stage or at a subsequent appeal; and
   - if the appeal or ground of appeal had no reasonable prospect of succeeding.

APPEAL A

Reasons

6. Although a particularly narrow matter, I consider the appellant to have demonstrated unreasonable behaviour in suggesting that the Council had failed to follow the correct procedure in its preparation and submission of the appeal questionnaire. The Council confirm that the full questionnaire and accompanying required documents were sent to the appellant, as required in the start date letter, in three emails. It says that the appellant responded to one of the emails and I have been given no reason to dispute that they did not receive the other 2 questionnaire emails. Whilst the appellant refers to limited internet access when referring to his difficulty in sending emails over a particular size, this does not explain why they may only have received one of the three emails sent by the Council. Accordingly, I conclude that the time spent by the Council in responding to this point was a wasted expense in the appeal process.

7. The Council point to the appellant's claim that, until their final comments, they had maintained that the double-decker bus was in use as an 'agricultural office'. I find this to have been a misleading element of the appellant's case and is one of the reasons why I had considered it necessary for the appeal to be considered via the hearing procedure.

8. The bus may well have an intended purpose that might be regarded as a use that is ancillary to the lawful agricultural use of the site. The appellant may also be unaware of the need for planning permission for the storage of the bus until it is used for some other purpose. As I have noted in the appeal decision, any use of the bus prior to 2020 was only intermittent and has long since ceased. I do not, therefore, consider there to be justification for the appellant's claim (until final comments and the hearing itself) that the bus is used for a purpose when it is not. As such, I find the appellant to have acted unreasonably in this regard. There has, therefore, been wasted expense for the Council for the time spent on this matter during the appeal procedure and prior to the appeal. I have included the time spent on this matter prior to the appeal as paragraph 032 of the PPG informs that 'Costs

applications may relate to events before the appeal or other proceeding was brought'; this is provided that the events are related to the appeal.

9. I do not consider there to be a contradiction in the appellant's claims during the appeal regarding the mobility of the bus. I do not see any difference between the claim that the bus is mobile or able to be mobile. The critical matter is how the bus is used. There is no suggestion that the bus is regularly moved about the site or on an off the site, such that this would have altered my conclusions regarding the use of the land.

10. With regard to the hearing procedure, the Council are of the view that, despite the appellant's request for a hearing, it was not necessary for Appeal A to be determined. Ultimately the decision for the appeal procedure lies with me. I acknowledge that my initial view was that the appeal could be considered via the written representations procedure. However, having had regard to correspondence received from the parties in response to the change of procedure, I determined that a hearing would be the most appropriate procedure in order for me to ask certain questions and clarify some matters. I cannot, therefore, find the appellant to have behaved unreasonably in their request for a hearing in this case.

11. Notwithstanding this, I can only agree with the Council, that at the hearing the appellant introduced new evidence and new grounds upon which they have relied on in the appeal. In addition to this, the appellant has also failed to substantiate their case with regard to certain matters.

12. Although the appeal was made under ground (c)[1], the appellant's written submission under this ground were briefly stated. They claimed that permission was granted for the use by reason of the planning permissions that had been granted for the erection of buildings on the yard area of the site. The appellant was, however, unable to provide any robust evidence to substantiate these claims, either in writing or at the hearing.

13. I find the same with regard to the appellant's case as it relates to the track to Apple Barn. The evidence submitted fell substantially short of demonstrating that the only use of the track is for residential purposes and that the planning permissions granted for land at Apple Barn demonstrate this. The same can be said of the appellant's claims with regard to the use of the appeal site for storage for a period in excess of 10 years. Indeed, the appellant acknowledged at the hearing that all machinery and vehicles stored in the yard area (save for the bus) were used in connection with the wider farming land, thus demonstrating the ancillary nature of the storage of this machinery to the lawful agricultural use.

14. As for the introduction of new evidence and grounds of appeal, the appellant made an entirely new point under ground (c) at the hearing, claiming that the development had the benefit of permission granted by reason of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order). Although this element of the appellant's case had some merit, it had not been raised by them prior to the hearing. This necessitated a longer adjournment in order for the Council to prepare a response to the point, as well as the time spent at the hearing making sense of this element of the appellant's case and giving the Council the opportunity to respond.

[1] Paragraph 174(2)(c) of The Town and Country Planning Act 1990 as amended.

15. Additional time was also spent at the hearing dealing with other new elements to the appellant's case that had not previously been mentioned. These include the claims relevant to the ground (b) appeal with regard to the suggested parking area at the entrance to the track, and the claim that the yard area is a planning unit of its own.

16. Pertinent to the ground (d) appeal, the appellant referred at the hearing to the presence of a lorry on the appeal site. This, together with the appellant's claims regarding the storage use of the yard area (as mentioned above), comprised the entirety of the appellant's ground (d) appeal, yet the presence of the lorry had not been previously mentioned in the appellant's written submissions. The introduction of this point at the hearing demonstrates unreasonable behaviour on the part of the appellant. Time was taken during the hearing for the relevance of this point to be clarified, for the Council to consider its response, and for the discussion on this to take place.

17. For the reasons given above, the appellant has demonstrated unreasonable behaviour by introducing new evidence and new grounds of appeal at the hearing, and for failing to substantiate the grounds of appeal made. This has resulted in unnecessary or wasted expense on the part of the Council.

18. As for the post site visit internal photographs of the machinery barn, these were received by the Planning Inspectorate on 7 November 2024, two days after the close of the hearing. Any delay in the receipt of these by the Council is the fault of the Planning Inspectorate and not the appellant.

19. In all of my conclusions above, I have been mindful that the appellant's understanding of the appeal process and matters relevant to land use planning may be limited and that some of the issues identified above result from this. Nevertheless, the Government's planning practice guidance on enforcement and appeals is detailed. As is its procedural guidance on enforcement notice appeals. Furthermore, the letters sent to the appellant to start the appeal clearly set out the timetable for the submission, prior to the hearing, of 'full details of the case which you will put forward at the hearing including copies of any documents (maps, plans etc) to which you will refer'. The appellant has also chosen not to employ the assistance of a professional.

Conclusion

20. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred. My conclusion does not, however, apply to the appeal in its entirety. It has not been demonstrated that the appellant's unreasonable behaviour is such that it alone has resulted in the issue of the enforcement notice. Furthermore, whilst I have not agreed with the appellant in this appeal, certain elements of their case have had some merit and were not, therefore, unreasonably made. These matters also necessitated some discussion at the hearing. Accordingly, I conclude that only a partial award of costs is justified in this case. This is in respect of the following matters:

    i. The appellant's claims with regard to the appeal questionnaire and accompanying documents;

    ii. The entirety of the appellant's ground (c) appeal;

iii. The entirety of the appellant's ground (d) appeal;

iv. The elements of the appellant's case on ground (b) as it relates to:

- The claim that the bus is used as an office;
- The claims with regard to the track to the apple barn;
- The claims with regard to the yard area being a planning unit of its own and its lawful use for storage; and
- The claims with regard to the use of land adjacent to the track to Apple Barn.

Costs Order

21. 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 Terence Andrew shall pay to Dartmoor National Park Authority, the costs of the appeal proceedings described in the heading of this decision as Appeal A limited to those costs incurred in respect of the matters listed in paragraph 20 above; such costs to be assessed in the Senior Courts Costs Office if not agreed.

22. The costs applicant is now invited to submit to Mr Terence Andrew, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

APPEAL B

Reasons

23. The Council says that the appellant has behaved unreasonably in making Appeal B. the first reason given is that the appeal was made, despite the Council's decision to refuse the prior approval application because the development subject of the application would not benefit from the permission granted by the 2015 Order as it had already been carried out.

24. I have concluded that the development subject of Appeal B and the prior approval application does not benefit from the permission granted by the 2015 Order. As such, I agree with the Council, that its decision to refuse the application for this reason was correct.

25. At the hearing the appellant confirmed that the rendered finish that is the subject of Appeal B was completed in 2020, prior to the making of the prior approval application. The appellant does not, therefore, dispute that the relevant conditions of the 2015 Order have not been adhered to and that, as such, the development does not have the benefit of the permission granted by the 2015 Order.

26. Again, I am mindful that the appellant's understanding of the prior approval and appeal process might be limited. Nevertheless, the Council has taken time to explain in the decision letter why it has reached the conclusion that the development does not have the benefit of the permission granted by the 2015 Order. This is also made clear in the officer's report prepared in respect of the application. Even if the appellant had been advised by a Council officer to make the prior approval application, the basis on which the application was refused is

clear from the officer's report and the decision. In my judgement, these documents could not be read as indicating anything other than there being no reasonable prospect of success on an appeal against the Council's decision.

27. For the reasons given above, I can only conclude that the appellant has behaved unreasonably in making the appeal and that this unreasonable behaviour has resulted in wasted and unnecessary expense on the part of the Council in its response to the appeal.

28. I have noted the Council's other reasons for making the costs application. Some of these relate to matters that I have not considered in my decision on Appeal B. Nevertheless, even if I were to disagree with the Council on the remaining elements of its costs application, this would not change my conclusion that the appellant was unreasonable in making the appeal.

Conclusion

29. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

30. 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 Terence Andrew shall pay to Dartmoor National Park Authority, the costs of the appeal proceedings described in the heading of this decision as Appeal B; such costs to be assessed in the Senior Courts Costs Office if not agreed.

31. The costs applicant is now invited to submit to Mr Terence Andrew, to whom 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