



Costs Decisions

Inquiry Held on 4, 5, 6 and 10 February 2025

Site visit made on 4 February 2025

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Costs Application (A) in relation to Appeal Refs:

APP/D1265/C/24/3351182/3/4/5/6/7

Land known as Anchor Paddock, Batchelors Lane, Holtwood, Holt BH21 7DS

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Michelle White and Mr Michael White for a full award of costs against Dorset Council.
 - The Inquiry was in connection with appeals against three enforcement notices.
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Costs Application (B)

- The application is made by Dorset Council for a partial award of costs against Mrs Michelle White and Mr Michael White.
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(A and B) - Decisions

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

(A) - The submissions for the Applicant

2. The Council unreasonably withheld the DDR and expediency report which meant it was difficult to appeal against the notices on the correct basis and costs of preparing the initial statement were wasted. The Council consequently was not fully informed of the appellant's position. This had knock on consequences during the proceedings as the Council only properly grappled with the case at the statement of common ground stage (the SoCG), which had to be extended. The Officer had also never visited the site and the Council's proofs were in many cases inconsistent with the SoCG, which wasted inquiry time.
3. The Council completely failed to properly assess what ought to be granted consent, before taking action, and whether enforcement was expedient or not. There was a total failure to investigate, and a site visit was not undertaken until 5 months after the notice was issued. The SoCG provides evidence that the Council got the planning balance wrong. For the Treehouse, no action should have been taken in respect of the works and none at Anchor Paddock other than to secure appropriate volume equalisation. No action should have been taken at White Barn as a dwelling nor the end/side extensions. Circumstances did not change in the intervening period and the Council failed to research the law and relevant decisions.

4. The failure to accept other developments as replacements is inexplicable and the rejection of volumetric equalisation was wrong. Taking action against White Barn was premature and the notice was issued without any discussion, causing the Council to get its case wrong. The proceedings would have been totally different if the Council had agreed what is now in the SoCG and a lot or all of the costs would have been avoided.
5. If the Council agree there is nothing wrong with the altered/replaced Treehouse, why was it required to be demolished? A new point about the Housing Act was also introduced. The assessment of balancing the evidence 75/25 was then so far outside limits of what could be deemed reasonable. On the basis of the Council's lack of research both practical and legal, failure to apply the law, and promoting arguments that had so little prospect of success as to be unarguable, full costs ought to be awarded for the entirety of the Treehouse element of the appeals. There is also no planning policy basis for coming to a different view about the appropriateness of residential use on KS2 or any other basis, and to do so would be inconsistent with White Barn and Oaktree Paddock.
6. At Anchor Paddock the Council agree that the dormer and both extensions can be retained. It would be perverse for the Council to say they can be retained but then act in a manner (S174(2A)) that would make that impossible. The notice should therefore have been withdrawn.
7. It was unreasonable to enforce against White Barn and the extensions. Having accepted the use of White Barn, the step requiring the removal of services was unreasonably wrong. The step requiring it to become an annex was wrong. Attention was diverted during the Inquiry about the design.
8. The Council has got its facts wrong about raising the land levels. The wall and swimming pool then fall within the curtilage. The Council's view about the teen annex and glazed link hasn't kept up with the residential use being acceptable. Totally unreasonable views have been taken and there is no impact on the Green Belt as is clear when viewed on site. Volumetric equalisation should not have been resisted. It was also unreasonable to take action against hardstandings within the curtilage.
9. A new point was raised about the planning obligation which is wrong in law as explained during the round table discussion.
10. Whilst there is some scope for planning judgement, the whole basis for the enforcement is fundamentally flawed and contradictory. The consequences of the notices being upheld is serious for the appellants, and they should not have been put to the stress and costs of these proceedings.
11. Accordingly, a full award of costs is sought. In the alternative, a partial award is sought in relation to (1) information request, (2) the costs of the appeal statement on the basis of the information unreasonably withheld, (3) the cost association with the demolition element relating to the treehouse, (4) the costs relating to the use of the treehouse as a dwelling, (5) the costs associated with the retention of the Dormer, Anchor Paddock East and Anchor Paddock West (excluding the cost of the demolition planning obligation), (6) costs associated with the use of White Barn as a dwelling, (7) costs associated with retention of the White Barn Single End, (8) costs associated with the White Barn Side

Extension, (9) costs associated with the question of whether there has been land raising and whether the slab of the Teen Annex has been raised up, (10) costs associated with whether the Teen Annex is a replacement not materially larger, (11) costs associated with whether the Greenhouse is a replacement not materially larger (less the cost of a UU required to provide whole or partial volumetric equalisation), (12) costs associated with whether the Garage and Home Office are replacements not materially larger (less the cost of the UU required to provide whole or partial volumetric equalisation), (13) costs associated with retention of services and hardstanding within the curtilage.

(A) - The response for Dorset Council

12. The claim is wide ranging and appears to have two central elements, being a procedural claim which appears to relate to the provision of information by the Council to the appellant, and a substantive claim relating to the position adopted by the Council at the time of serving the notice and subsequently.
13. In terms of the procedural basis, the notices contain reasons for being issued and the appellant has not sought to criticise the extent of reasoning provided. It is then normal practice to not publish other decision making documents at the same time as the notices. The DDR says little more than the reasoning in the notices and the appellant has not explained how unnecessary expense was caused.
14. The expediency report was co-authored and is an internal document. There is no obligation to provide it to a contravener before an appeal is made, nor has the appellant identified a legal policy for such an obligation. The provision of the report then did not cause extra expense for the appellants as a full statement of case was provided and the appellant has not sought to row back or amend any aspect of it. No document has subsequently been highlighted as academic or wasted. The provision of the expediency report on 9 October 2024 was not unreasonable and nor has the appellant shown it caused unnecessary or abortive expense.
15. The SoCG deadline was extended by agreement but this was not owing to the site visit of the ecologist. No inconsistencies with the proofs and SoCG were then identified during cross examination. Inquiry time was only wasted as a result of almost the entire cross examination of the Council's witnesses being taken up with scrutiny of the Council's past conduct and not the remaining disputed issues. To that extent, almost all of the questions/submissions put to the Council's witnesses were irrelevant to the issues in dispute, and only went to the issue of costs.
16. The expediency report is then comprehensive and so it is incorrect to state that the Council completely failed to properly assess matters.
17. The substantive claim at its heart is an inappropriate attempt to undermine the statement of common ground process and penalise the Council for acting reasonably in keeping its case under review at all times. That is wrong as a matter of principle and is also not borne out on the facts.
18. Responding to each of the areas of complaint requires addressing the reason why the Council formed the position that it did in the SoCG, which is a matter the Inspector stated he did not want inquiry time wasted on given that it was

the common ground position. Unfortunately, it is now necessary to correct the record on some of these matters and set out the detail. New relevant material also only came to light during the appeal process such as the survey of the previous teen annex structures and ARC survey, which was provided on 20 December 2024, but which is dated from 2020.

19. A chronology of events is then provided in respect of the Treehouse. This is considered to demonstrate the obstructive and unhelpful approach taken by the appellant and his team (including requiring the Council obtain a court warrant), which makes it very difficult to see the basis for any complaint about the Council's actions here.
20. The application also wrongly seeks to go behind the planning evidence given by the appellant's consultant. The appellant cannot now volte-face and seek to disown his own planning consultant's oral evidence given in cross examination, however inconvenient it might be for his costs claim.
21. The dispute around the Anchor Paddock works now centres on ground (d), with the appellant's case having collapsed on the ground (a) due to s174(2A). It is not the Council's fault that the appellant and his agent and solicitor omitted to consider this legal provision until it was pointed out by the Council. In any event, prior to the appeal the appellant had never offered to demolish the entirety of AP1 and AP2 and agree to a condition of no rebuilding or use of permitted development rights. The Council's conduct cannot be faulted.
22. The appellant's position had been that White Barn was Class Q development but subsequently had to row back from this. Prior to the issue of the notice, the appellant had not supplied clear evidence showing that White Barn was in fact a conversion, nor provided evidence that an extension was in fact a replacement of an earlier structure, or that the teen annex and glazed link were subsequent works. In short, the Council had considered the Green Belt exceptions but found them not to apply. That was a reasonable position to take at that time, on the information then available.
23. The Council's position on the enforceability issue with the unilateral obligation requiring demolition at Anchor Paddock is maintained, and relevant. It emerged as an issue once the Appellant had shared his draft with the Council (on 12 January 2025), which made clear the problem.
24. The Council's position overall is that some issues might have been streamlined earlier had the appellant acted in a co-operative manner, but as can be seen through the history of the site visits, and the PCN responses, this was not so. Overall, each element of the claim for costs is mistaken. The appellant has not demonstrated unreasonable conduct, nor explained clearly how each of the elements alleged have put him to unnecessary or abortive expense.

(B) - The submissions for the Applicant

25. A partial award is sought in relation to ecology. A bat survey had been undertaken by the appellants, but this only related to building AP1, whereas a draft unilateral undertaking indicated the prospect of further demolition. As a result of concerns arising from further demolition, the Council arranged for an ecologist to visit the site, following which a proof of evidence was produced

- which raised concerns about building AP3. The ecologist therefore prepared to attend the inquiry and give evidence.
26. The day before the inquiry at approximately 3.30pm the appellants sent through a further bat survey, where evidently an inspection hatch in the ceiling of building AP3 had been cut and a further survey of the roof void carried out. The Council's ecologist then attended the site visit, and consequently revised the view as to the appropriateness of a condition.
27. The Council considers the appellants behaved unreasonably by not providing access to the roof void for the initial visit, but subsequently making it available after proofs had been submitted and for the Inquiry site visit. This put the Council to the unnecessary and abortive expense of the ecologist drafting a proof and attending the Inquiry and site visit, when, had the appellants cooperated in the conventional way and provided access at the earlier stage, the necessity for a proof of evidence and attendance at the Inquiry and site visit could have been avoided. The Council should therefore be entitled to its costs on this point.
28. The Council would reiterate that this situation has only come about as a result of the appellant's decision to offer buildings for demolition, which it recognised would necessitate ecological survey work. The Council should not have to bear the extra financial burden generated by the way matters have been dealt with on this relatively small topic in the context of the Inquiry.

(B) - The response for the Appellant

29. The draft undertaking contained a blank schedule where the appellant's intention was to agree which buildings were to be demolished and so which consequently raised issues in relation to bats. The appellants had also not had sight of the expediency report at this stage.
30. The application then skips forward to the site visit but omits key elements such as when it became apparent lots of elements could sensibly be agreed, as subsequently per the SoCG.
31. The appellants were fully aware of the need to deal with bats. There was however no suggestion that AP3 would be required until later in the proceedings and the Council's own site visit only took place on 20 December 2024, the day when the SoCG was supposed to be submitted. No access to roof voids were requested by the Council.
32. The Inspector also gave a clear steer that ecology evidence ought not to be necessary and the appellants have been entirely positive and helpful to reach agreements. At no time has access been denied.

(A and B) - Inspector Reasons

33. 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.
34. The appellants accept they aren't coming into the appeals process with clean hands and mistakes have been made. The onus is then on the appellants to demonstrate their case on the balance of probabilities. They however hold the

- Council responsible for unreasonable behaviour. Their costs application is then wide ranging but has since been confirmed as having three elements: (1) The procedural claim relating to the withholding of information; (2) The failure to adequately research the matter before initiating appeal proceedings; (3) Once the failures in the research were pointed out the Council acted unreasonably in continuing to pursue points that it would have known were doomed to fail.
35. The Council investigation was unduly long, nearly 4 years in respect of Anchor Paddock. This was not assisted by the uncooperative responses to PCNs from the appellants and absence of a planning application/s at White Barn. When enforcement action was to be taken, all the Officer's responsible should probably have visited the site, but there is again evidence of the appellants being uncooperative when site visits have previously been requested. Given the quantum of unauthorised development and common ownership, it was then entirely logical to take action across the three identified sites.
36. For the purposes of taking enforcement action, it only has to appear to the Council that there has been a breach/s of planning control. The Council was then substantively correct in this regard. Expediency is then largely not a matter for me, but it is clear from the notices how the Council arrived at its position, which was underpinned by policy. I am not persuaded that the delay in providing the expediency report was somehow intentional, unreasonable or led to wasted expense. The Council did not then unreasonably introduce new topics during the proceedings.
37. The Council has then been accommodating in trying to seek a resolution. It has taken pragmatic views in respect of the conversion of White Barn, the extensions to it and one outbuilding, as well as the works to the Treehouse. There would appear to be a solution for Anchor Paddock as well. That being so, it cannot be used to say the Council was then wrong when the notices were issued or it failed to adequately research the matters. Indeed, it was entirely correct to take enforcement action at that time given the breaches that subsisted and absence of a suitable planning application for any of the buildings at the site after a considerable period of time.
38. Tellingly, it took the enforcement notices and appeal to sufficiently focus the minds of the appellants to engage with the Council and in matters such as the drafting of unilateral undertakings, so as to make or find some of the developments acceptable.
39. The appeals process and SoCG in particular facilitated site visits being undertaken, and the disclosure of longstanding evidence held by the appellant. This enabled the Council to consider matters in light of that evidence and reach agreements with the appellants. I therefore do not accept that the Council started down the route of enforcement on the wrong basis or continued to pursue points that did not have merit or were doomed thereafter. There were not vague or inaccurate assertions that could be said to amount to unreasonable behaviour. There is little evidence of unarguable points or legal failings.
40. Inquiry time was not wasted as a result of the conduct or position of the Council. Indeed, the appellants position changed with the withdrawal of different grounds of appeal, but I do not find this was precipitated by the supposed late provision of the expediency report given the appellants were

professionally represented and the general chronology of events including their own provision of evidence at latter points in the proceedings.

41. During the Inquiry, where points required clarification, such as in respect of ground (f) requirements, these were expedited by the parties swiftly. Highlighting potential issues with a Unilateral Undertaking is then entirely reasonable.
42. I am fully aware of the circumstances cited in the PPG where unreasonable behaviour might be demonstrated. I am however not persuaded that any other of the appellant's points amount to unreasonable behaviour on the part of the Council to warrant either a full award or a partial award through disaggregating each individual element of the appeal. I am also not persuaded that the Council was unreasonable in not withdrawing the Anchor Paddock notice as an alternate way of dealing with s174(2A).
43. Both parties were then alive to the issue of bats, given the appellant's offer to demolish certain outbuildings. It appears those offers evolved over time to encompass more outbuildings, but the appellants had undertaken a number of surveys and were constructive in seeking to resolve any issues, as indeed were the Council. Whatever the intervening correspondence between the parties may have been, the submission of the final survey was very late, but given the timetable for the Inquiry and intentions of the appellants to resolve matters in this regard and that failure to inspect the roof void had been identified, I am not persuaded it amounts to unreasonable behaviour. I had also indicated at the Case Management Conference that an ecological witness would unlikely be required. This was because any outstanding matters could likely have been dealt with on the papers as cross-examination was unlikely to be necessary even if there had remained some disagreement between the parties.
44. There is then little evidence that costs should be awarded because of the supposed need to make a costs application or in dealing with responding to one made in a timely fashion.

(A and B) - Conclusion

45. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR