



Costs Decision

Inquiry 3, 5 and 9 December 2024

Site Visits on 2 and 5 December 2024

by Mrs H M Higenbottam BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2025

Costs application in relation to:

Appeal A: APP/T2215/C/24/3337755 and Appeal B : APP/T2215/C/24/3337756

Land adjacent Beacon Hill, Rowhill Road, DARTFORD, Kent, DA2 7QG

- 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 Dartford Borough Council for a partial award of costs against Mr and Mrs Watts.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission the erection of a detached building in the approximate position shown outlined in red on the attached plan.
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Decision

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

The submissions for Dartford Borough Council

2. The costs application was delivered orally, with a written submission provided at the Inquiry. The application is for a partial award of costs in relation to procedural matters.
3. The introduction of the purpose of the building for an 'Airsoft' use was made on the first day of the Inquiry. The use of the building for such a purpose was not referred to in either the Hearing statement or the Proofs of Evidence for the Inquiry. As a result, the examination in chief and cross examination took significantly longer than expected and could and should have been avoided had the appellants included this new evidence in the written evidence. Furthermore, the appellants evidence did not meet the standard required to present precise and unambiguous evidence.
4. The Inspector recalled the appellants on the second day resulting in further prolonging of the Inquiry and a second site visit because of the introduction of the Airsoft use evidence.
5. Less than an hour before the start of the second day of the Inquiry further new evidence was provided in the form of an email from an agricultural consultant. The appellants' agent had received it the afternoon before resumption. The delay in receipt of this evidence, and provision of it to the Council, was unreasonable. There was an objection in principle to the introduction of the late evidence. The appellants' professional witness was recalled and further inquiry time was spent considering this evidence and testing it. Moreover, the evidence sought to secure planning permission for development outside the scope of the deemed planning application.

6. The prolonging of the proceedings by the introduction of a new issue is an example in the PPG which may give rise to a procedural award against an appellant.
7. This amounts to unreasonable behaviour procedurally which resulted in unnecessary or wasted expense of attendance at the additional Inquiry day (10am to 1.30pm) by Council Officers and advocate/witness.
8. The reference in the written submission to the withdrawal of the ground (f) appeal was removed from the application when it was delivered orally.

The response by Mr and Mrs Watts

9. The response was delivered orally, with a written submission provided at the Inquiry.
10. The appellant denies the need for a third sitting day, which was actually only half a day, arose due to the Airsoft issue. The Inquiry was intended to sit for 1.5 days, with closings to be heard virtually on the second day. As often happens at Inquiries the evidence took longer to be heard than was originally anticipated. This was not unreasonable behaviour, but instead inherent in the nature of these proceedings.
11. At no point did the Council request an adjournment arising from the Airsoft issue.
12. The need for the third day arose from two causes:
 - Counsel for the appellants being in the High Court on the day between day 1 and day 2 which placed the appellants in a difficult position for preparing closing submissions in time.
 - The Council having their Christmas Party on the afternoon of day 2.The additional day has resulted in minimal additional time as the Inquiry sat remotely and only took the morning to conclude.
13. The appellants accept that the Airsoft issue could and should have been put in written evidence. However, it is not agreed that this led to significant additional time being required. The evidence in chief of Mr Watts took longer for two reasons:
 - Mr Watts' statutory declaration was short. Time was therefore spent on multiple years of history and all the matters set out in the Council's Hearing Statement.
 - Mr Watts had suffered a medical episode in the recent past which affected the time needed to go through evidence.
14. The Council also referred to:
 - Recall of Mr Watts on day 2. This was due to the Inspector wanting to ask additional questions and was not an example of unreasonable behaviour by the appellants.
 - Second site visit. This was requested by the Inspector and again was not unreasonable behaviour by the appellants.
 - Additional evidence at the beginning of day 2. This was submitted to address a question raised by the Inspector in relation to the reasonableness of a condition restricting use of the building to an agricultural use only. It was a one-page email which resulted in very little additional Inquiry time.

15. The response in relation to the ground (f) element of the written submission was withdrawn when it was delivered orally.

Reasons

16. 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.
17. The allegation related to the erection of a building and did not refer to a use of the building. Albeit there was reference in a requirement to a domestic storage use.
18. In relation to the ground (d) appeal the appellants needed to demonstrate, on the balance of probabilities, that the building was substantially completed before 4 January 2020.
19. The appellants had each produced a statutory declaration which attested to the building having been substantially completed before 3 January 2020. They also stated that by October 2019 a full roof was attached to the building. However, the purpose of the Inquiry was to test this evidence. The presentation and testing of the evidence, both written and oral, of the appellants led to an explanation of the purpose of the building. This was when the Airsoft use was explained and tested in the oral evidence. The testing of the evidence that has been submitted in writing often results in more detailed oral explanations and it is not unreasonable for the appellants to provide such explanations and evidence. The oral evidence took the time necessary to test it so that I could gather the relevant information to inform my decision.
20. The recalling of witnesses was a matter for me as the Inspector. In the light of the discussions and evidence presented, I considered it was necessary and reasonable to clarify some matters and therefore recalled witnesses. This is clearly not unreasonable behaviour by the appellants.
21. In relation to the second site visit, it was noted in the Case Management Conference Note that a second site visit may be required, and this was clearly a matter for me as the Inspector. This cannot therefore be unreasonable behaviour by the appellants.
22. The additional evidence in relation to agricultural use of the building was submitted by the appellants to address a matter I had raised about the reasonableness of the imposition of a condition. While it was additional evidence it was able to be dealt with without the need for an adjournment and utilised little inquiry time. I see nothing unreasonable about seeking to address a point I raised.
23. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Mrs H M Higenbottam

INSPECTOR