



Costs Decision

Site visit made on 20 May 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th June 2025

Costs application in relation to Appeal Ref: APP/Y9507/C/24/3353926

Land at West Fork, Farnham Road, Liss GU33 6LA

- 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 Mr Terry Harris of South Downs Caravans Ltd for a partial award of costs against South Downs National Park Authority.
 - The appeal was against an enforcement notice alleging the material change of use of land from agriculture to caravan storage and repair, and associated operational development.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The applicant seeks a partial award of costs in respect of the time spent on their case relating to a building known as 'the Barn', which was required to be removed by the notice. It is claimed that had the National Park Authority (NPA) interpreted *Caldwell*¹ correctly and invited comments/further evidence from the applicant rather than issuing the notice the day after it refused an application for a Lawful Development Certificate, there would have been no need for the applicant to make appeal submissions regarding the Barn. Further claims are made that the NPA failed to demonstrate how it identified the extent of the land the subject of the notice.
4. The NPA claims that it did not fail to take account of *Caldwell*, and that it is not unusual for case law to be interpreted in different ways. It is also claimed that it made the applicant aware of its interpretation of the case law in January 2024, when it was explained that formal enforcement action would be taken if the alleged breach of planning control was not regularised.
5. The parties both interpret *Caldwell* correctly. The NPA, however, has applied it incorrectly on the evidence available in this case. That may be due to a lack of sufficient investigation prior to issuing the notice, which may have been clarified had a report considering the expediency of enforcement action been provided. For example, it is unclear why the NPA did not appear to serve a Planning Contravention Notice (PCN) in respect of the material change of use, despite

¹ *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

referring to this as ‘the primary breach’. A copy of a PCN from 2019 has been provided relating to the Barn, which did not ask any questions about its use or that of the surrounding land.

6. The NPA has not substantiated how it reached the conclusion that the Barn facilitates, and is ancillary to, the material change of use referred to in the notice, or how the *Murfitt*² principle could otherwise apply to the Barn. Moreover, very little evidence has been provided to show the NPA fully understood the circumstances concerning the erection of the Barn and its relationship with the material change of use.
7. I therefore find that the NPA acted unreasonably by issuing the notice with Steps ii. and iii. included on the evidence it had at that time, without subsequently providing sufficient explanation why. This is because the NPA has not shown how or why it may have appeared the erection of the Barn was facilitative of, and/or ancillary to, the material change of use, or otherwise unlawful. Furthermore, I note the NPA did not respond to the applicant’s detailed submissions in this regard³ at the Final Comments stage of the appeal, which may have clarified matters.
8. The applicant incurred unnecessary expense on account of this unreasonable behaviour by having to submit appeal arguments addressing how the *Murfitt* principle, as referred to in *Caldwell*, did not apply to the Barn. The applicant’s unnecessary expense is limited to the time spent addressing the appeal under grounds (d) and (f), which essentially included the same arguments, and the time spent pursuing the costs application. A partial award of costs is therefore warranted.
9. Although it remains unclear how the NPA identified the extent of the land the subject of the notice, the appellant made no claims that the material change of use had not taken place. I therefore find no unreasonable behaviour and unnecessary or wasted expense incurred in this regard.

Costs Order

10. 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 the South Downs National Park Authority shall pay to Mr Terry Harris of South Downs Caravans Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in pursuing an appeal under grounds (d) and (f) and in applying for their costs; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the South Downs National Park Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Douglas

INSPECTOR

² *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

³ Appendix 7 to the appellant’s Statement of Case