Costs Decision

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2025

Costs application in relation to Appeal Ref: APP/J9497/C/24/3338794
Black Street Farm, South Tawton, Okehampton, EX20 2LN

- 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 Sean McCaffrey for a full award of costs against Dartmoor National Park Authority (the NPA).
- The appeal was against an enforcement notice alleging the change of use of the building to use a single dwellinghouse.

Decision

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

Procedural Matters

2. The costs application was submitted at an early stage of the appeal. The NPA were not initially given an opportunity to comment. They were then consulted and, as is normal procedure, the applicant for costs (the appellant) was given the opportunity for the final comment. However, given the changes in circumstances since that was submitted, further matters were raised in their final comments. The NPA were therefore given the opportunity to make further comments just on those additional matters. The appellant was then given the last word.

Reasons

3. 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. The PPG also confirms that costs applications may relate to events before the appeal or other proceedings were brought, but the costs that are unrelated to the appeal or other proceeding are ineligible.

4. Costs in appeal proceedings do not directly follow from the outcome of the appeal. The costs application can only relate to whether one party has acted unreasonably in relation to the enforcement notice appeal and also, even if they have, whether that has resulted in wasted expense for the other party.

5. By way of brief background, a planning application had been submitted on 12 April 2023 and was refused for the same development on 10 July 2023. An appeal against that refusal (the s78 appeal) was lodged on 25 July 2023. A report was discussed by the NPA Development Management Committee on Friday 1 December 2023 regarding the expediency of taking enforcement action against the breach of planning control.

6. The enforcement notice was then issued on 11 January 2024, prior to the determination of the s78 appeal on 30 April 2024. It was not unreasonable as a matter of principle for the NPA to issue an enforcement notice whilst the related s78 appeal was running its course even if that was mainly in order to retain control over what was an undisputed breach of planning control. That is one way of taking enforcement action under the provisions of s171A(2) of the Act, thereby bringing to a halt any ongoing continuity of the breach of planning control with respect to the time limits set out within s171B. The NPA has to act in the public interest. As such it was proper use of their powers to issue the notice because the related s78 appeal may have been dismissed by which time the matter could have become immune from enforcement action.

7. The appellant had the opportunity to express their opinions about their personal circumstances prior to the issuing of the enforcement notice. However, their inability to see the entirety of the 'Part 2' report that was considered by the NPA committee was unfair to them. The report concerned the appellant's partner whose personal circumstances were clearly of some considerable significance and they should have had a proper opportunity to comment upon what was being said about them before the decision was made. They however had put forward an effective case through the s78 appeal which was ongoing at that time. The Inspector considered that personal issues outweighed the conflict with the development plan.

8. Some of these circumstances demonstrate a degree of unreasonable behaviour by the NPA. However, given the timing and in particular the need retain control over the breach of planning control in the public interest, it seems unlikely that even if that information had been available to the appellant earlier, that it would have affected whether or not a notice was issued. Furthermore, expediency is for the planning authority to consider and is not subject to challenge in an appeal. There are other procedural ways of challenging administrative procedures and expediency.

9. As such, it is probable that the appeal against the enforcement notice would have been necessary even if the appellant had been given the opportunity to provide more information to the NPA committee. The unreasonable behaviour did not directly result in wasted expense in terms of the procedural or substantive issues in the appeal against the enforcement notice.

10. The appellant also considers that the NPA should have withdrawn the enforcement notice when planning permission was granted for the same development, on 30 April 2024. From that date, what was alleged did not constitute a breach of planning control which has resulted in the appeal being allowed on ground (c) and the notice being quashed. The NPA in reviewing their case, whilst acknowledging that the breach no longer existed, did not withdraw the notice. In these circumstances, it is completely understandable that the appellant would not withdraw their appeal because there could be ongoing ambiguity about the status of the enforcement notice and the lawfulness of the development in the future. Officer views have been given in writing regarding the cessation of the breach but that is not the same as withdrawal or quashing of the notice.

11. The NPA's justification for their position is also flawed. If the notice remained and circumstances were different in future with the people occupying the dwelling changing, that would constitute a new, different breach of planning control.

12. Whilst there is no legal requirement to withdraw an enforcement notice in these circumstances, it serves no planning purpose to retain it. The NPA have incorrectly considered the implications of not withdrawing the notice. With respect to these proceedings, they do not seem to have realised that the notice would have to be quashed through the appeal proceedings. With respect to the costs application therefore, it was unreasonable to not withdraw the notice because that unnecessarily perpetuated the appeal.

13. The appeal statement and final comments were due and submitted prior to the determination of the s78 appeal. There has however been correspondence that the appellant has been involved in since that point, which would not have been necessary if the notice had been withdrawn when planning permission was granted. The appellant has therefore incurred costs as a direct result of the appeal continuing. This therefore warrants a partial award of costs against the NPA.

Conclusion

14. The NPA's did behave unreasonably after the s78 appeal was allowed by not withdrawing the enforcement notice which directly resulted in the appellant incurring wasted expense.

Costs Order

15. 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 Dartmoor National Park Authority shall pay to Mr Sean McCaffrey, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in correspondence and communication about the appeal since 30 April 2024; such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicant is now invited to submit to Dartmoor 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.

Andy Harwood

INSPECTOR