The Planning Inspectorate

Costs Decisions

Inquiry Held on 29 June, 11, 12, 18, 19 October and 4 November 2021
Site visit made on 13 October 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Costs Application (A) in relation to Appeal Refs: APP/L1765/C/20/3261886, APP/L1765/C/20/3261887
The Greenhouse, Gravel Lane, Shirrell Heath, Hampshire

- 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 Ms Heather Woods and Mr Graham Snape for a full award of costs against Winchester City Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging the construction of a single dwellinghouse and residential use of land.

Costs Application (B)

- The application is made by Ms Heather Woods and Mr Graham Snape for a partial award of costs against the Rule 6 Party Mr Richard Stone (the R6P).

Costs Application (C)

- The application is made by Winchester City Council for a full award of costs against Ms Heather Woods and Mr Graham Snape.

Costs Application (D)

- The application is made by the R6P for a full award of costs against Ms Heather Woods and Mr Graham Snape.

Decisions

1. The applications (A, B, C and D) for an award of costs are refused.

Reasons

2. 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

Applications A and B

3. The thrust of the applications concerns the topic of deliberate concealment and time subsequently devoted to this during the Inquiry. This is a substantive ground.

4. Furthermore, a procedural ground is raised against the R6P for the late submission of evidence, leading to an adjournment.

5. In respect of the substantive ground, I have found the Council had earlier opportunities to take enforcement action. I have also found that the R6P was aware of the breaches of planning control from the outset yet was content to benefit from these for a considerable period and then from the sale of the land to the appellants. I have further found there was an act of deliberate concealment on the part of the appellants.

6. Whilst it might be said that the Council, who preferred the evidence of the R6P over the appellant's, may not have properly tested that evidence objectively, much of this was nevertheless consistent with the Council's own assessment. It was then not unreasonable that this evidence be brought before and tested during the Inquiry, no matter how long that took.

7. In respect of the procedural ground, it is clear that confusion arose surrounding the R6P's proof of evidence and appendices. A hard copy was properly made available to me, but it transpired shortly before the Inquiry opened that the appellants had not been provided with a copy. Even though the R6P had earlier confirmed his evidence had been correctly received, I am not convinced unreasonable behaviour can be laid solely at the door of the R6P in this regard.

8. Even if I am wrong, the Inquiry was principally adjourned because the time estimates provided by the parties made it abundantly clear that the two days reserved for sitting would have been inadequate. It was then clear the availability of the parties, including my own, meant the Inquiry could not resume for a considerable period. It was therefore appropriate to not hear partial evidence and arrangements were made between the parties for the Inquiry to resume during consecutive weeks. This also allowed the appellants to fully review the evidence of the R6P; being evidence I would have allowed to be brought before the Inquiry in any event owing to its relevance. Accordingly, even if there was unreasonable behaviour, costs did not flow as a consequence as the Inquiry was always going to sit for multiple days, along with the preparation time this necessitates.

Applications C and D

9. The thrust of the applications is that the appellants were put on notice about the topic of deliberate concealment, and it was unconscionable for them to have advanced their case. The ground (d) appeal was therefore hopeless, and it was this ground of appeal which required matters to be dealt with by an Inquiry. This is a substantive ground. It is further advanced that there was procedural unreasonableness by the provision of information that was shown to be manifestly inaccurate or untrue. It was therefore unreasonable to have pursued this ground of appeal and costs have flowed as a consequence.

10. Moreover, it is contended the pursuit of the ground (a) appeal, given the appellants acceptance the developments were not in accordance with the development plan, and that they struggled to identify material considerations to otherwise grant planning permission, is similarly unreasonable. It is also contended the pursuit of the ground (b), (f) and (g) appeals were unreasonable. This is a substantive ground.

11. I have made clear my findings in respect of deliberate concealment and how this is tempered. It was clear to me the appellants relied very heavily and followed the planning advice of a friend exceptionally closely, but this ultimately proved to not be in their best interests. It was therefore not unconscionable or unreasonable for them to advance a ground (d) appeal as the significance of certain events and evidence were not borne out until oral evidence during the Inquiry. In addition, the effects of the operation of section 171B(2) of the Act and with-it time limits for immunity only became appreciable during the Inquiry, and was a matter only advanced by the R6P.

12. There was also evidence of efforts to produce evidence for the purposes of the Inquiry. Whilst that could readily be regarded as fabricating evidence, I accept this was based upon factual events. It was therefore not manifestly inaccurate or untrue. I also accept the reasons why it may not have been appropriate for one of the appellants to have given evidence in light of their medical condition.

13. Whilst I appreciate the appeal was heard by Inquiry, principally owing to the ground (d) appeal, I am not convinced that unreasonable behaviour can be laid at the door of the appellants. The site had a complex history spanning over 10 years along with very differing versions of events presented by the parties. It was therefore right that an Inquiry was convened, and on-balance, in light of my findings, it was not unreasonable for the appellants to have pursued this ground of appeal. It was not an entirely hopeless one since it turned primarily on whether I was to accept the proposition that the inclusion of the additional land in 2015 did not impact on the immunity accrued in respect of the smaller area and that the creation of the dwellinghouse did not re-set the clock.

14. During the Inquiry it was accepted on behalf of the appellants that the developments were contrary to LP policy. However, whilst I recognise it was not their primary case, the appellants did advance material considerations during the Inquiry which may have indicated a decision should have been taken other than in accordance with the development plan. Whilst I only then attached moderate weight to those considerations, that was a matter for my planning judgement, and it was not unreasonable for the appellants to have those considerations assessed under a ground (a) appeal.

15. In my view the issue of the planning unit was dealt with by the appellants. In light of the sequence of events in respect of occupation and ownership, it was likely the parties may identify differing planning units or when a new unit was created. That again was a matter of planning judgement based upon the totality of the available evidence presented by all the parties. It was accordingly not unreasonable for the appellants to advance a case under the ground (b) appeal. That I then considered the bulk of those points as a ground (c) appeal made no difference to the time spent by the parties addressing these arguments.

16. The purpose of the notice was clearly to remedy the breaches of planning control. During the Inquiry, the Council helpfully proposed corrections to the notice, and this went some way to addressing the appellants concerns raised under the ground (f) appeal. It was therefore not unreasonable to advance this ground of appeal, even though I did not accept all the appellants arguments. The appellants also found some success on the ground (g) appeal based upon the evidence they placed before me.

Conclusion (A, B, C and D)

17. 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