TOWN AND COUNTRY PLANNING ACT 1990

SECTION 174 INQUIRY

IN RESPECT OF LAND AT CAROUSEL PARK, BASINGSTOKE ROAD, MICHELDEVER, WINCHESTER, HAMPSHIRE, SO21 3BW

APPEALS BY MR LOVERIDGE, MR O'DONNELL, MR P. STOKES, MR CARTER, MR B. STOKES, MR CRUMLISH, MR FLYNN

PINS REFS: APP/L1765/C/22/3296767; 3296768; 3296771; 3296772; 3296773; 3296774; 3296776; 3296777; 3296778; 3296779; 3296781; 3296782; 3296783; 3296784; 3296503; 3296504

COSTS APPLICATION

ON BEHALF OF THE LOCAL PLANNING AUTHORITY

WINCHESTER CITY COUNCIL

Introduction

1. The Council makes an application for partial award of costs on procedural and substantive grounds.

2. These submissions are provided in accordance with the timetable set by the Inspector.

3. The Council indicated that there would be a partial costs application on 21 November 2023. . At that time, the grounds for the application were extremely strong. They are now overwhelming.

Planning Practice Guidance ('PPG')

4. Relevant paragraphs of the PPG state:

Why do we have an award of costs?

Parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

The aim of the costs regime is to:

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case
- encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,
- discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.

(Paragraph: 028 Ref. ID: 16-028-20140306)

In what circumstances may costs be awarded?

Costs may be awarded where:

- a party has behaved unreasonably; and
- the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.' (Para. 030 Ref. ID. 16-030-20140306)

What does "unreasonable" mean?

The word "unreasonable" is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.
Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account.' (Para. 031 Ref. ID. 16-031-20140306).

What counts as unnecessary or wasted expense?

An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.' (Paragraph: 032 Reference ID: 16-032-20140306)

Behaviour that may lead to an award of costs against appeal parties - Appellants

When might an award of costs be made against an appellant?

Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. The examples below are not exhaustive. The Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.

(Paragraph: 051 Ref. ID: 16-051-20140306)

What type of behaviour may give rise to a procedural award against an appellant?

Appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Examples of unreasonable behaviour which may result in an award of costs include:

- resistance to, or lack of co-operation with the other party or parties in providing information, discussing the application or appeal, or in responding to a planning contravention notice
- delay in providing information or other failure to adhere to deadlines
- only supplying relevant information at appeal when it was requested, but not provided, at application stage
- introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen
- prolonging the proceedings by introducing a new ground of appeal or issue
- not completing a timely statement of common ground or not agreeing factual matters common to witnesses of both principal parties
- failing to attend or to be represented at a site visit, hearing or inquiry without good reason
- providing information that is shown to be manifestly inaccurate or untrue
- deliberately concealing relevant evidence at planning application stage or at a subsequent appeal.
- withdrawal of an appeal without good reason

(This list is not exhaustive.)

(Paragraph: 052 Ref. ID: 16-052-20140306)

What type of behaviour may give rise to a substantive award against an appellant?

The right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when:

- the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence
- the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an

Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period

- in enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant. Sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. The appellant is at risk of an award of costs, if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question
- lack of co-operation on any planning obligation

(This list is not exhaustive.)

(Paragraph: 053 Ref. ID: 16-053-20140306)

The appeals in this inquiry

5. Having heard evidence from the parties, the Inspector will need to determine the following appeals:
    a. Seven appeals[1] against EN1 (material change of use to a residential caravan site for approximately 100 caravans) each advanced on grounds (a), (b), (d), (e), (f), and (g).
    b. Seven appeals[2] against EN2 (breach of condition in respect of the limitation on the number of caravans on each pitch to 3 (condition 10), the limitation of the number of pitches to 9 (condition 11) and the limitation on the number of residents to condition 50 (condition 15)) each advanced on grounds (a), (c), (d), (e), (f) and (g).[3]
    c. Two appeals[4] against EN4 (material change of use to a residential caravan site for 10 caravans) both advanced on grounds (a), (f) and (g).

6. The inquiry was initially scheduled by PINS for 16 days, although in the event the oral hearings had concluded by day 7, with closings to be heard virtually the following week.

Ground (a)

7. The Council makes an application for costs on procedural and substantive grounds in relation to the Appellants' ground (a) appeal as follows.

[1] 3296767 (Mr Freddie Loveridge), 3296771 (Mr Anthony O'Donnell), 3296776 (Mr Hughie Stokes), 3296778 (Mr Danny Carter), 3296781 (Mr Patrick Stokes), 3296783 (Mr Oliver Crumlish), 3296773 (Mr Patrick Flynn)
[2] 3296782 (Mr Patrick Stokes), 3296768 (Mr Freddie Loveridge), 3296772 (Mr Anthony O'Donnell), 3296774 (Mr Patrick Flynn), 3296777 (Mr Hughie Stokes), 3296784 (Mr Oliver Crumlish), 3296779 (Mr Danny Carter)
[3] Mr Woods confirmed that no ground (b) was being advanced in relation to the appeals against EN2: ¶7.3 BW PoE.
[4] 3296503 (Mr Patrick Stokes) and 3296504 (Mr Bernie Stokes)

8. The Appellants did not respond to PCNs issued by the Council shortly before the issue of the EN. Providing the information requested could have foreshortened the appeal process considerably.

9. The Appellants do not dispute that the breach of planning control described in EN1 is contrary to the development plan and do not now seek planning permission for it. However, the Appellants did initially seek permission for the used alleged in the notice, as set out in their appeal forms and it was only at the inquiry that the scope of the deemed planning application became clear. Had the ground (a) case been made in a more timely manner, the issues between the parties could have been narrowed considerably, truncating timetabling and the matters which needed to be covered in evidence. A considerable amount of the written evidence submitted on the part of the Council was directed to whether planning permission should be granted for the use alleged in the notice (as opposed to the narrower use sought by the Appellants), which was entirely wasted, unnecessarily.

Grounds (b), (c), (d), (e) and (f)

10. As will be detailed in the Council's closing submissions, the central problem with the Appellants' approach to this inquiry is that substantively, the Appellants have advanced grounds of appeal with no reasonable prospect of succeeding. The appeals should have focussed on ground (a) and associated matters. By advancing the legal grounds of challenge, the Appellants have pointlessly prolonged matters and wasted the Council's time and resource.

2. In relation to the ground (e) appeals, while some of the site occupants suggested that they had not seen the enforcement notices, none of them disputed that the enforcement notices had been served as set out in the Council's evidence. What is more, multiple witnesses indicated that those on site could not have missed the notices had they been on site. Perhaps most memorably, Mr Patrick Stokes said that "if you lived on site, you couldn't not know about them". Likewise, the first witness Anthony O'Donnell acknowledged that the notices were 'all over the place' and that 'you couldn't miss them'. This was consistent with the overwhelming evidence from other site occupants that good service had been affected in accordance with the statutory requirements, as further attested to by Mr Wicks and Mr Wicks in oral evidence. In cross-examination, Mr Woods accepted that service was compliant with s.239 TCPA. At most, he asserted that it seemed to him that a number of people were not directly handed enforcement notices in person and several of the older residents had difficulty reading and writing. That was the extent of his evidence on ground (e). In cross-examination, he confirmed he was not giving evidence of fact in relation to service. He also accepted that "strictly speaking", service could

be effected by delivery by hand; by leaving it at the last known place or usual place of abode. He could not dispute the photographs of Mr Wicks posting notices through letterboxes at the front of Carousel Park. By pursuing the ground (e) appeals, the inquiry itself was prolonged considerably, with the Council needing to cross-examine each witness of fact on the matters arising under it. The ground (e) appeals were always a confected distraction that was bound to fail. The pursuance of the Ground (e) appeals in circumstances where there were no real prospects of success amounted to unreasonable behaviour which clearly resulted in unnecessary or wasted expense.

11. In relation to the ground (b) appeals, the onus of establishing ground (b) rests on the Appellants. Mr Woods dropped the ground (b) appeals in respect of EN2 prior to the inquiry, in his PoE. In reality, he should never have sought to maintain the Ground (b) appeals in respect of EN1. There is no substantive dispute between the parties that the appeal site is used as a residential caravan site. The Appellants failed to offer an evidence-based response to the obvious position that the Council advanced at inquiry, namely that there had, as a matter of fact, been a material change of use as alleged in EN1. The Appellants' continued pursuit of Ground (b) was based on Mr Woods' misunderstanding of the role of the planning unit in the appeal process. In any case, he advanced no positive case that the matters stated in the notice had not occurred as a matter of fact. Separately under the Ground (b) appeals, Mr Woods somewhat bizarrely referred to some otherwise unidentified reference to waste processing within EN1. In cross-examination, it was put to him that he couldn't change what the enforcement notice said as a matter of law, and that neither enforcement notice referred to an allegation of waste processing. He had no credible response to this obvious proposition. Overall, the Ground (b) appeals should never have been advanced and detracted from the substance of the appeals. The Ground (b) appeals were bound to fail. The pursuance of the Ground (b) appeals in circumstances where there were no real prospects of success amounted to unreasonable behaviour which clearly resulted in unnecessary or wasted expense (via the requirement to produce further evidence to refute the challenge, and via prolonging of the inquiry).

12. In relation to the ground (c) appeals, which are only maintained in respect of EN2, the onus of establishing ground (c) rests on the Appellants. The Appellants' case on ground (c) is plainly misconceived. Mr Woods' evidence was that the erection of fences and walls was permitted development. The Council's position is that the Appellants are wrong to suggest any walls or fences benefit from planning permission, whether granted pursuant to the General Permitted Development Order or otherwise. The fencing granted planning consent via 05/01506/FUL no longer exists. Irrespective of whether walls or fences are permitted, the breach of planning control alleged relates to the sub-division of the plots. To erect walls or fences within the plots

such that the plot was subdivided gives rise to a breach of condition 11 of the 2003 consent, and thus a breach of planning control. There was no serious argument on this during the course of the inquiry. In his oral evidence, Mr Tom Wicks said that he thought Mr Woods was saying that because there are PD rights relating to fences and gates, the Appellants did not need to comply with the condition, although he considered that this was not a good basis for a Ground (c) appeal. Again, the pursuance of the Ground (c) appeals in circumstances where there were no real prospects of success amounted to unreasonable behaviour which clearly resulted in unnecessary or wasted expense (via the requirement to produce further evidence to refute the challenge, and via prolonging of the inquiry).

13. In relation to the ground (d) appeals, raised in relation to EN1 and EN2, the onus of establishing ground (d) rests on the Appellants. In openings, the Appellants somewhat cryptically said they would demonstrate through "*evidence of site residents and other documentary evidence that elements of the enforced development were immune from enforcement at the date of issue in March 2022*". As the inquiry progressed, however, it became increasingly apparent that the Appellants' ground (d) appeals were another diversionary tactic that took up valuable inquiry time and resource. In relation to EN1, it is common ground that the relevant time limit is 10 years beginning with the date of the breach (i.e., the material date in this case is 1 March 2012).[5] The Appellants' case was that the appeal site was occupied by TSP only in eleven caravans until 11 December 2011 but then in the eleven weeks to 1 March 2012, there was a material change of use to the residential caravan site described in EN1, including the stationing of approximately 100 caravans for residential use. When it came to evidencing this case, Mr Woods accepted that none of the current occupants had suggested that they had been living permanently on site since March 2012, and that the parties could agree that even on the Appellants' own evidence, the commencement of the appellants' occupation was not before March 2012. Likewise, in relation to EN2, the material date of the breach was 1 March 2012. Again, the Appellants failed to demonstrate with any evidence at all, let alone precise, unambiguous evidence that the breach of planning control alleged in the notice occurred before the material date and has been active and continuous ever since. Tellingly, in cross-examination, Mr Woods accepted that no good evidence had materialised in relation to the Ground (d) appeals. Even given this wholesale concession – by which he implicitly maintained a ground of appeal despite acknowledging he did so without evidence – he refrained from conceding the ground and sought to maintain the appeal. In re-examination, Mr Rudd sought to take Mr Woods to an inspector's 2011 plan from a site visit which noted operational development. However operational development was not in issue, given the enforcement notice

[5] See TW Rebuttal ¶90-92

was concerned with a material change of use. Again, the pursuance of the Ground (d) appeals in circumstances where there were no real prospects of success amounted to unreasonable behaviour which clearly resulted in unnecessary or wasted expense (via the requirement to produce further evidence to refute the challenge, and via prolonging of the inquiry).

14. It is no answer for the Appellants to suggest that it only became clear during the inquiry that the legal grounds of appeal pursued were without merit. It was incumbent on the Appellants in pursuing their grounds of appeal to ensure that there was some evidential basis for them (which there clearly was not) and thereafter to review their position (for example on receipt of the Council's evidence) with a view to withdrawing those grounds of appeal which were bound to fail. The Appellants not only failed to ensure that there was some evidential basis for their grounds of appeal before bringing them but thereafter failed to review their position on receipt of further evidence. In either case, considerable time and effort could have been saved on the part of the Council, whether in the preparation of its own evidence or through the unnecessary prolongation of the inquiry.

Conclusion

15. These appeals are the latest episode in the complicated and lengthy enforcement history at Carousel Park. The Appellants have had the benefit of experienced and specialist professional representation throughout the present appeals. In those circumstances, it is especially disappointing that the expensive and time-consuming process of a public inquiry has been prolonged without good reason. The main argument – about whether and if so how the site should be used by the Appellants – has been largely side-lined for long parts of this inquiry by the Appellants' indiscriminate pursuit of other hopeless grounds.

16. The Council requests that the Inspector exercise his discretion and make a partial award of costs in favour of the Council arising from the matters set out above.

Jack Parker

Jack Barber

Cornerstone Barristers

27 November 2023.