
Costs Decision

Inquiry held on 19 July 2016

Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 01 September 2016

**Costs application in relation to Appeal Ref: APP/B9506/X/15/3138718
Land at Avonvale Sun Club, Highwood Lane, Highwood, Ringwood,
BH24 3LZ**

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Peter Timbrell for a full award of costs against New Forest National Park Authority.
 - The inquiry was in connection with an appeal against the refusal of the Authority to issue a certificate of lawful use or development for use of the site for overnight sleeping in caravans, campervans and tents.
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This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 9 August 2016.

Decision

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

Procedural Matters

2. The application for costs was made in writing¹ and the Authority provided a rebuttal in writing². Both the application and the rebuttal were provided before the Inquiry. Mr Huggett, on behalf of Mr Timbrell, responded to the rebuttal at the Inquiry.
3. The description of the use sought set out in the heading above is a précis of the applied for amended description which was '3 touring caravans at any one time limited to 4 times a year; Use of camper vans for sleeping on no more than 8 separate occasions in any one year; 15 tents on a weekend when hosting a special event – 4/6 events a year; Tents for no more than 2 nights limited to 20 such stays in one year. The use only by current members while engaged in recreational activities on the site'.

The submissions for Mr Timbrell – Main points

4. The application is founded on paragraph 047 of the Planning Practice Guidance: Appeals (PPG) in that the Authority has behaved unreasonably because of,

¹ Document 1

² Document 3

among other things, lack of co-operation; failure to provide information; and failure to agree a statement of common ground.

5. A previous LDC was refused because of 'insufficient evidence'. The Appellant did not appeal that decision but chose to try and agree what evidence the Authority needed additional to what it already had before making a further application. The Authority declined Mr Huggett's request for a meeting and also declined to establish a number of matters including what information the Authority had to cause it to have doubts about the veracity of Mr Timbrell's account of event and what evidence the Authority would expect to see. During the appeal process the Authority failed to agree a statement of facts; the Authority's proofs of evidence misdirected themselves in their consideration of the application; and the refusal was unjustified because the application was not considered on its merits.

The response by the Authority – Main points

6. The first application for a LDC was refused on 12 August 2014. The Authority provided the Applicant with details of the shortcomings in the evidence and maintains that it is not the Authority's role to help applicants find evidence, the onus is on applicants to undertake this exercise. What evidence is required is set out in paragraph 005 of the PPG on LDCs.
7. The second application contained very little additional evidence from the first and the accounts were not submitted until the appeal process.
8. The Authority was not happy with the Appellant's first draft statement of common ground and drafted a more basic one. Amendments proposed by both the Authority and the Appellant were not acceptable to either party.

Reasoning

9. The 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 process³.
10. This was the second application that was made for a LDC in relation to, in essence, camping and caravanning overnight at the appeal site. The evidence provided in the first application was insufficient to enable the Authority to issue a LDC. The PPG makes it clear that 'an application must be accompanied by sufficient factual information/evidence for an [Authority] to decide the application ... An application needs to describe precisely what is being applied for ... without sufficient or precise information an [Authority] may be justified in refusing a certificate'⁴. With regard to an existing use, as is the case in this appeal, the PPG says 'if an [Authority] has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'⁵.
11. There was no appeal against the refusal of the first application and a second application was contemplated and eventually made. On the evidence before it,

³ Planning Practice Guidance: Appeals paragraph 030

⁴ Planning Practice Guidance: Lawful Development Certificates paragraph 005

⁵ Planning Practice Guidance: Lawful Development Certificates paragraph 006

the Authority refused the second application which is the subject of the appeal before me.

12. Mr Huggett, in his capacity as a professional agent for Mr Timbrell, was aware of the PPG and the requirements set out therein. It was Mr Huggett's and Mr Timbrell's responsibility to provide evidence that was sufficient to justify the grant of a LDC. I do not consider that the Authority had a responsibility to provide information other than as set out in the PPG, that is, information that the Authority may hold about the planning status of the land and, if it canvasses evidence, to share that evidence with the applicant⁶. The representations made by interested persons were made known to Mr Huggett and Mr Timbrell.
13. It is unfortunate that the Authority failed to respond to requests for a meeting with Mr Huggett and/or, if the information he sought was available, to provide it to him but I do not consider the Authority acted unreasonably in this respect.
14. It is also unfortunate that no statement of common ground could be agreed between the parties but given the differences in the cases that were presented at the Inquiry and the different interpretation of events and letters by both parties it is not surprising to me that no agreement could be reached about the contents of a statement of common ground.
15. I had the benefit of seeing the accounts, which were submitted as part of the appeal process, and hearing oral evidence. These were benefits which the Authority did not have in reaching its decision. Even with these benefits I found in my appeal decision that Mr Timbrell had failed to provide evidence that was sufficiently precise and unambiguous to allow a LDC to be granted, either in the terms sought or in terms substituted by me under s.191(4) of the 1990 Act. In the circumstances I consider that the Authority did not act unreasonably in refusing the application.

Conclusions

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Gloria McFarlane

Inspector

DOCUMENTS

Document 1 – Appellant's application

Document 2 – Documents to support application for costs

Document 3 – The Authority's rebuttal

⁶ Planning Practice Guidance: Lawful Development Certificates paragraph 006