The Planning Inspectorate

Costs Decisions

Inquiry opened on 1 November 2016

Site visit made on 31 October 2016

by Paul Dignan MSc PhD

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

Decision date: 27 March 2017

Costs applications in relation to Appeal Refs: APP/B9506/C/15/3136274 & 3140428
Bartley Forest Farm, Lyndhurst Road, Cadnam, Hampshire, SO4 2NR.

- The applications are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- **Application A** is made by New Forest National Park Authority (NFNPA) for a full or partial award of costs against Mr Dan Ap Dafydd.
- **Application B** is made by Mr Dan Ap Dafydd for a full or partial award of costs against New Forest National Park Authority.
- The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the land to a mixed use comprising agriculture and the stationing of caravans for residential purposes, and the erection of buildings, and an enforcement noticing alleging engineering operations pursuant to the construction of a track.

Decisions

1. Application A: The application for an award of costs is refused.

2. Application B: The application for a partial award of costs is allowed in the terms set out below.

The applications

3. Both applications were made in writing before the Inquiry closed. Due to time constraints, the responses, also in writing, were made afterwards to an agreed timetable. Some of these are exceptionally lengthy, so I will not attempt to summarise them.

4. The parties in appeals are normally expected to meet their own expenses, but 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 guidance on costs in planning appeals is set out in the government's Planning Practice Guidance (PPG). It advises that unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues.

Application A

5. This is the application by NFNPA. It is made on numerous procedural and substantive grounds. The first procedural behaviour considered to be unreasonable is that which led to the appeal being determined by Inquiry

rather than by written representations, as originally intended. The short answer to this is that the appropriate procedure is a matter for the Planning Inspectorate (PINS).

6. The second procedural allegation relates to failure to adhere to timetables. There is some dispute about when the appellant notified PINS about the witnesses to be called, but it does appear that it was as late as 25 October 2016 that the local authority were advised of the number of witnesses and provided with proofs. However, none of the evidence was new, so I it is difficult to see how that might have caused the authority unnecessary expense. This was certainly not what resulted in the Inquiry going beyond the 1 day scheduled originally. The failure to agree a Statement of Common Ground was also raised, but a feature of this case was reluctance on both sides to agree anything of substance, so I doubt that sufficient matters could have been agreed in advance as to save the Inquiry time.

7. Another procedural shortcoming alleged by the NFNPA is the late production of the Unilateral Undertaking in respect pf SPA mitigation. No significant Inquiry time was spent on this, but what time was spent was on a matter that it was the responsibility of the local planning authority to address. Witness timetabling, at my request, was also raised, but what transpired could not be characterised as unreasonable behaviour in my view.

8. If I was to be critical of the appellant's approach it would be the plethora of documents provided, many of which cross-referenced each other, and which made the evidence hard to follow at times. However, rather than amounting to unreasonable behaviour, I have interpreted it as a lay advocate struggling to get to grips with the procedural requirements. It underlines the value of professional representation, but not everybody can afford to be properly represented, and so some tolerance is appropriate.

9. The local planning authorities case on substantive grounds is firstly that the appellant's case was too narrow, focussing only on agricultural justification. The appellant did focus on CS Policy DP13, whereas there were other relevant policies that were capable of pulling in different directions, but that did not mean that the appeal had no reasonable prospect of succeeding.

10. Regarding the appellant's attempts to overcome the 3rd reason for issuing the first enforcement notice, relating to SPA mitigation, it is argued that the appellant's attempt to present himself as a Commoner, in the sense of exercising New Forest common rights, and to put this argument to Natural England, was unreasonable behaviour. I fail to see the point.

11. Reference is made to how the ground (b), (c) and (f) appeal were made, but not in a way that I could sensibly apply to a costs application. Finally, it is stated that the ground (g) appeal (in Appeal A) need never have been made if the appellant had taken advantage of the opportunity presented to him before the notice was served to agree a period of 6 months. In reality it was for the local planning authority to establish a reasonable compliance period. It is not good practice to use it for negotiation.

12. Overall I am not persuaded that the NFNPA has made out its case for an award of costs, either full, or partial.

Application B

13. This is the appellant's application. First, it is argued that the NFNPA's conduct in issuing the notices was unreasonable. On this point it is important to emphasise that the purpose of the costs regime is to ensure that all parties involved in appeals behave reasonably in the appeal process. Most of the appellant's arguments on this point go to the expediency of taking enforcement action in the first place. That is not a matter for me, and insofar as there may have been a case for inviting a retrospective planning application for an unauthorised mobile home, a course of action the NFNPA's Local Enforcement Plan (LEP) is concerned, that may be so, but that approach in the LEP is qualified. In the most serious cases, and that is how the NFNPA has described this development from the outset, negotiation is not recommended. Specifically by reference to unauthorised mobile homes, the LEP states that the NFNPA will proceed to issue an enforcement notice unless there is considered to be justification for its retention. Clearly that is a matter of planning judgement.

14. Subsequent examples of unreasonable behaviour alleged include a failure to seek updated advice from its agricultural consultant, its failure to make the agricultural consultant available as a witness, and the failure to present an enforcement officer for questioning. However, the local planning authority can put its case as it wishes. Had the appellant sought to establish that he could not reasonably present his case without access to these witnesses, a request could have been made to me to summon them. No such request was made.

15. One aspect of the application is that the authority wrongly proceeded on the basis that if CS Policy DP13 were met planning permission could or should still be refused. There was nothing wrong with that approach. It is frequently the case in development plans that policies will pull in different directions.

16. There were some other matters raised that indicated a somewhat *laissez faire* approach on the part of the NFNPA to internal procedures, and it was not always as cooperative as it should have been regarding access to documents. However, aside from the matter of the letter of notification, which I deal with below, none that were raised had any significant costs implications so far as I could see.

Partial

17. PINS wrote to the NFNPA in advance of the Inquiry requiring it to notify people of the details of the Inquiry, including those who made representations. On the first day of the Inquiry the Council provided me with a copy of its letter of notification. The inquiry, which was scheduled for 1 day, did not finish on the day and was adjourned. It transpired the following day that many who should have been notified were not. As a result I had to consider whether to re-start the Inquiry, having regard to the need to ensure fairness. The 2 witnesses that had given evidence were essentially witnesses of fact and their evidence primarily concerned the second enforcement notice. I decided that there would be no unfairness in not recalling them, but that the Inquiry should otherwise proceed as though it was the opening day. I wrote to the parties accordingly, and later advised that the appellant should arrange for Mr Smith to attend the resumed Inquiry.

18. It is quite straightforward that a procedural failure on the part of the NFNPA which caused unnecessary expense should result in an award of costs to make

good that expense. The PPG makes that clear. Surprisingly in this case the NFNPA opposes it. It does not really accept responsibility for the failure to correctly notify, and even suggests then that if it was at fault, only part of the cost of Mr Smith's attendance on the second day should be re-imbursed since he was able to add to his evidence, and then that he could have been called earlier on the day to save money. I do not propose to entertain any of these arguments. The NFNPA's procedural failure was the sole reason Mr Smith was present on the second day. The procedural failure was unreasonable behaviour. It led directly to the appellant incurring costs that he would not otherwise have. Those are the costs he seeks to reclaim. The conditions for a partial award of costs are clearly met.

Costs Order

19. 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 New Forest National Park Authority shall pay to Mr Dan Ap Dafydd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in retaining Mr Howard Smith MRICS for attendance on the 2nd day of the Inquiry, 31 January 2017, such costs to be assessed in the Senior Courts Costs Office if not agreed.

20. The applicant is now invited to submit to New Forest 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.

Paul Dignan

INSPECTOR