
Costs Decisions

Site visit made on 30 October 2018

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2018

Costs application in relation to Appeal Ref: APP/B9506/C/18/3195834 Land at Nampara, Gorley Lynch, Hyde, Fordingbridge SP6 2QB

- 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 New Forest National Park Authority for a full award of costs against Mr Colin Morgan.
 - The appeal was against an enforcement notice alleging without planning permission the occupation of the dwelling on the land affected in breach of condition 6 of planning permission NFDC/76/04665.
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Costs application in relation to Appeal Ref: APP/B9506/W/18/3195837 Nampara, Gorley Lynch, Hyde, Fordingbridge SP6 2QB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by New Forest National Park Authority for a full award of costs against Mr Colin Morgan.
 - The appeal was against the refusal of planning permission for erection of an agricultural dwelling and construction of a pedestrian/vehicular access without complying with a condition attached to planning permission Ref 4665, dated 4 May 1976.
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Decision

1. Both applications for an award of costs are refused.

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
3. The National Park Authority (NPA) sought awards of its costs on substantive as well as procedural grounds. In summary, the NPA said that no substantive evidence had been produced to support the appellant's case in either of the appeals. In particular, none of the evidence required in the supporting text to Policy DP14 of the New Forest National Park Core Strategy and Development Management Policies DPD (CS) had been supplied. The grounds (f) and (g) appeals were inadequately pleaded. The appellant's case had not accurately reflected the true market position of the appeal property. There was also no attempt by the appellant to negotiate with the NPA before the appeals were

made. The NPA concluded that it had therefore been put to the wasted expense of defending the appeals.

4. At paragraph 052, the PPG emphasises that appellants are required to behave reasonably in relation to procedural matters at appeal. The examples of unreasonable behaviour in terms of the appeal procedures listed at the end of the paragraph include resistance to or lack of cooperation in discussing the application or appeal and providing information that is manifestly inaccurate or untrue.
5. The appellant clearly had an ongoing dialogue with the NPA throughout the processing of the planning application. Moreover, having had the application refused and then being almost immediately in receipt of an enforcement notice, it would seem to me that he effectively had little option but to make these appeals in order to protect his position and to try to resolve the matter. Therefore, I do not regard the appellant's actions as evidence of a lack of cooperation with the NPA.
6. Given the background to the appellant's recent sale of nearby 'Windwhistle', his approach to selling the property in this appeal is understandable. The appellant's approach in this matter was fully explained. As a result, I do not agree that this part of his evidence is inherently inaccurate or sets out to mislead as regards what the market position of the property is in reality.
7. Consequently, taking both the above matters into account I am not persuaded that there has been unreasonable behaviour on the part of the appellant in relation to the procedures of these appeals.
8. In terms of the substance of the appeals, the PPG paragraph 053 explains that an appellant is at risk of an award of costs being made against them if their appeal had no reasonable prospect of succeeding. It goes on to give examples of a situation where this might arise. One of the examples is where a 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.
9. The appellant's case in both appeals was supported by evidence of the marketing of the property for sale. Whilst this evidence only partly followed the steps set out in the CS supporting text, it attempted to address whether there was a continuing agricultural need for the bungalow in accordance with CS Policy DP14.
10. Moreover, the appellant provided additional evidence in which he sought to explain why he considered that it was not necessary to fully follow the marketing and other steps required by the CS in this case. This evidence concerned the use and ownership of the adjacent land formerly associated with the property and his involvement in agricultural and other business activity thereon, as well as his personal circumstances. Details were also supplied of the circumstances surrounding the removal of the agricultural occupancy condition at 'Windwhistle' and a comparison made with the circumstances in these appeals. As a result, the additional matters raised by the appellant were material considerations in relation to the planning merits of both appeals and they were supported by reasoned evidence which underpinned his case. Furthermore, the ground (f) and (g) appeals were accompanied by a reasoned

explanation of why and how the appellant felt that the enforcement notice should be varied.

11. Therefore, I find that the appellant did satisfactorily substantiate his case which both sought to address CS Policy DP14 and to demonstrate that there were material considerations that warranted a decision being made other than in accordance with that policy, as well as to support the other grounds of appeal. Although ultimately I disagreed with the appellant in relation to these matters, that was a planning judgement made on the basis of the weight to be attributed to all of the submitted evidence. It follows that the appellant has substantiated his case in respect of these appeals and it is not safe to assume that they had no reasonable prospect of success.
12. Consequently, the conditions for awards of costs at paragraph 030 of the PPG have not been met.

Conclusions

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in either of the above appeals.

Stephen Hawkins

INSPECTOR