
Costs Decisions

Site visit made on 4 April 2016

by Simon Hand MA

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

Decision date: 25 April 2016

**Costs application A - in relation to Appeal Ref: APP/B9506/C/15/3134559
Land to the rear of Kingfisher Cottage, Salisbury Road, Burgate,
Fordingbridge, SP6 1LX**

- 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 Keith Pritchard.
 - The appeal was against an enforcement notice alleging without planning permission the material change of use of the land affected from agriculture to that for domestic purposes and the erection of a greenhouse.
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**Costs application B - in relation to Appeal Ref: APP/B9506/C/15/3134559
Land to the rear of Kingfisher Cottage, Salisbury Road, Burgate,
Fordingbridge, SP6 1LX**

- 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 Mr Keith Pritchard for a full award of costs against New Forest National Park Authority.
 - The appeal was against an enforcement notice alleging without planning permission the material change of use of the land affected from agriculture to that for domestic purposes and the erection of a greenhouse.
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Decisions

Appeal A

1. The application for an award of costs is allowed as a partial award in the terms set out below.

Appeal B

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

Appeal A – The Application by the Authority

The case for the parties

3. The Authority informed the appellant in February and September 2012 that the use of the land was agricultural and that any change to domestic or garden would be investigated. They specifically stated in February that such a use would amount to a material change of use. The appellant has ignored these warnings and gone ahead with the domestication of the site and has made no effort to regularise the position by either an application for a lawful

development certificate (LDC) or a planning application, despite being prompted by the Authority.

4. The various grounds clearly had no chance of success. The New Forest National Park is one of Britain's most protected areas, and in addition the river is an SSSI. Given the clear policies in the core strategy protecting this highly sensitive location there was no chance of success on ground (a) and nothing was put forward to suggest how the clear harm caused could be mitigated. The ground (b) and (f) appeals showed a fundamental misunderstanding of the Act and the ground (d) had no chance of success as no evidence was provided to support it.
5. The appellant responds that he has been happy to meet with the Council, but he is under no obligation to apply for a LDC especially when it was obvious there had been no material change of use. The Council misinterpreted planning law as they failed to consider the planning unit argument and assumed that any land without planning permission was by definition agricultural. The appellant's arguments on the various grounds are all well made. The Council are only applying for a full award, and so even if I were to find for the appellant on only one or two grounds there would still need to have been an appeal and so there are no wasted costs.

Reasons

6. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who have behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. I do not consider the appellant's willingness or otherwise to apply for a LDC is relevant to this costs application. Nor is the Council's view that land without planning permission is agricultural. There is no obligation to identify exactly what the previous use was, only to identify what the new unauthorised use is.
8. As to the evidence provided by the appellant it was almost entirely lacking. It was far from clear that Kingfisher Cottage and the island in the river occupied the same planning unit and virtually no evidence was provided to demonstrate that they did. The statutory declaration suggested only the southern tip, not owned by the appellant, was actually used as amenity land, otherwise the aerial photos supported the Authority's argument that the land had been semi-wild scrub or grass until very recently. I agree that grounds (b) and (d) had no chance of success.
9. Ground (a) is always more likely to be a matter of fact and degree but in this case I cannot but agree with the Council. There would have to be very strong arguments indeed to suggest that a material change of use of the island, set in the middle of an SSSI and within the National Park to a garden would not be harmful, especially when, on its face, it was clearly contrary to the Council's policies. It turned out the argument was essentially that a garden looks nice and a threat that if the appeal wasn't allowed worse would follow in terms of intensive horticulture. I agree that ground (a) also, on the basis of the evidence presented, had little or no chance of success.
10. I consider that ground (f) was ill conceived. The appellant cannot argue that he does not know the original condition of the land when it was he who had

made the changes to it. Nor can he argue that there is any uncertainty as to what "domestic purposes" are, when that is plainly what he is doing on the island at the moment. There was no requirement to maintain the land, simply to return it to the state it was in before. What the appellant does after that is a matter between him and the Authority. I consider the ground (f) appeal also had no chance of success.

11. I allowed the appeal on ground (g), and therefore it follows this was not ill-conceived. The appellant argues that if I found they had behaved reasonably on only one ground then a full award is not justified. I agree, but that does not stop me from making a partial award for the costs involved in dealing with grounds (a), (b), (d) and (f). Consequently, I consider the appellant has acted unreasonably in the terms set out in paragraph 53 of the PPG as the appeals on the grounds identified had no reasonable prospect of succeeding and a partial award of costs is justified.

Appeal B – the Application by the Appellant

12. The appellant has made a counter claim for a full award. He argues there is no evidence of a material change of use in the last 10 years and what evidence there is clearly shows the land has always been in amenity use. In any event the use causes no harm to the scenic beauty of the National Park. The Authority failed to consider that a planning application should have been requested and granted. The Authority failed to analyse the fallback position and the service of the notice was unnecessary.
13. It follows from my reasoning on appeal A that I do not consider these points to be well founded and I do not need to repeat them again. What evidence there was clearly did show there had been a material change of use and there was clear cut harm to the National Park. The Authority had made it clear they were opposed to any domestic or amenity use on the island so a planning application would have been a waste of time. The fallback position was not realistic.
14. I do not consider the Authority has acted unreasonably.

Costs Order

15. 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 Mr Keith Pritchard shall pay to the New Forest National Park Authority, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with grounds (a), (b), (d) and (f). Such costs to be assessed in the Senior Courts Office if not agreed.
16. The applicant is now invited to submit to Mr Keith Pritchard, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Simon Hand

Inspector