The Planning Inspectorate

Costs Decisions

Inquiry Held on 22 - 25 February and 28 February – 3 March and 7 March 2022
Site visit made on 3 March 2022

by Simon Hand MA

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

Decision date: 28 March 2022

Costs application A in relation to Appeal Ref: APP/B9506/C/20/3246929
Land at Passford Farm Southampton Road, Boldre, LYMINGTON, SO41 8ND

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mrs Penelope Hill for a 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 2 buildings to dwellings, the erection of an outbuilding and fences.
- A similar appeal, reference 3246928 has been made by Mr and Mrs Hill without the ground (a)

Costs application B in relation to Appeal Ref: APP/B9506/C/20/3246929
Land at Passford Farm Southampton Road, Boldre, LYMINGTON, SO41 8ND

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by New Forest National Park Authority for a partial award of costs against Mrs Penelope Hill
- The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of 2 buildings to dwellings, the erection of an outbuilding and fences.
- A similar appeal, reference 3246928 has been made by Mr and Mrs Hill without the ground (a)

Decisions

1. The application A for a partial award of costs by the appellant is refused.

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

Application A by the Appellants

3. The application is straightforward, that the Authority were unreasonable in contesting the ground (d) appeal for the Lodge in the face of overwhelming evidence from the appellant and that they had no counter evidence of their own. The Authority relied on the evidence put forward at the Inquiry to counter the claim.

4. I have dealt in some detail with the evidence concerning the Lodge. Certainly at the Inquiry, on the face of it, the Hills provided extensive evidence from many people as to what had been going on, which I found convincing.

However, there was also a subtle smoke-screen generated at certain times about who was occupying the building and for how long. It appears the Authority were led to believe the Lodge was only being occupied temporarily by Anne and Gordon Hill in 2007. They also had a council tax bill that suggested Anne Hill was a dependent resident and the Authority argued the occupation of the Lodge was ancillary to the farmhouse. It also seemed from various statutory declarations that Anne Hill vacated the Lodge in 2014 or 2015 but tenants did not move in until 2017. That gap was explained at the Inquiry, but it was not clear what the use was before that. It was also argued the Hills lived in the Lodge whilst servicing the B&B in the farmhouse for a year, which would be a further material change of use. This was explored in detail at the Inquiry, and although I preferred Mr Hill's explanation, it was not unreasonable for the Authority to prefer their own understanding of what was happening.

5. The Authority also ran a deliberate concealment argument at the Inquiry, and although I did not find Mr Hill's actions did amount to deliberate concealment so as to trigger the 'Welwyn' sanction, I can understand why the Authority thought the opposite. To a certain extent therefore Mr Hill has been the architect of his own misfortune.

6. I do not find the Authority acted unreasonably in pursuing their defence of the ground (d) appeal.

Application B by the Authority

7. The Authority have applied for partial awards on several grounds. Firstly that the appellant continued to pursue their ground (a) appeals for the Lodge and Barn after their planning agent made it clear they accepted the developments were contrary to policy. Secondly introducing a new ground (a) element for the outbuilding during the Inquiry which also had no chance of success. Thirdly, Mr Hill's evidence was manifestly inaccurate and misleading. Fourthly, failing to disclose evidence in a timely fashion, thus leaving the Authority inadequate time to consider it. Fifthly, relying on a fictitious ground (g) appeal. Sixthly and finally, general unreasonableness.

Ground (a) for the Lodge and Barn

8. I agree, the case on ground (a) for the Lodge and Barn were exceedingly weak from the outset. Despite the statement that they were in accordance with the plan, they manifestly were not and no attempt was made to explain how they were. The appellant's case was, in reality, that they caused no real harm because the difference in impacts between ancillary use and independent dwellings was marginal. This in itself is a dubious claim and seems to rest on the misapprehension that the Authority accepted the two buildings were dwellings, the only difference being their use.

9. In fact the Authority accepted the buildings had been converted so that they both passed the Gravesham test, but there is a considerable difference between an ancillary 'granny annex' or an outbuilding used for overspill B&B guests, and an independent dwelling. Even if, the particular way the appellants used the two buildings had similar impacts as if they had been independent dwellings, the use going forward would be bound to be different as Passford Farm Cottage has been sold off and the two buildings have no dwelling to be ancillary too. They would have to revert to storage or some use that was supported by the National Park local plan. This is entirely reasonable and

would not leave the buildings empty with no use as the appellants argued. Its possible Mr Parson's might buy them but that is pure speculation, and in any event would only lead to them reverting to an ancillary use.

10. Regardless of Ms Stellman's acceptance of the policy position the ground (a) had little chance of success, but following that admission, it was clear to succeed there would have to be material considerations of sufficient weight to outweigh the policy led conclusions. The appellants' counsel summed up the ground (a) in closings as "*The use of the two dwelling is small scale and of modest impact in a planning sense, it is difficult to see what additional impact or planning harm would occur with the removal of ancillary restrictions*". This is at best saying there is no additional harm and is unequivocally far short of finding material considerations to outweigh the serious policy harm that had been accepted.

11. I agree therefore, the continuation of the ground (a) argument beyond Ms Stellman's cross-examination was unreasonable behaviour that did occur unnecessary expense.

The Outbuilding

12. Although the outbuilding argument was introduced as part of ground (a) it is actually a hidden ground (c). The argument was that the outbuilding was permitted development because it stood within the residential curtilage of the Lodge and so was a Class E garden building. I deal with this in my decision, but the key issue is the Authority's unopposed evidence that it fell outside the 20m limit for outbuildings in a National Park. This was fatal to the ground (c) on its own and must have been known to the appellants from the start. To introduce an argument at a late stage that has no chance of success is unreasonable behaviour that occurred unnecessary expense by the Authority.

Mr Hill's Evidence

13. I have dealt with Mr Hill's evidence and concluded it did not amount to deliberate concealment so I shall not repeat those elements here as in this case I think the allegations of deliberate concealment and unreasonable behaviour are inextricably linked. However, the Authority also allege the conflicts between the evidence provided on oath and previously in statutory declarations differed sufficiently to amount to unreasonable behaviour.

    a) The question of the 2015 PCN where Mr Hill said the conversion of the Barn to a B&B/self-catering use had been carried out "as per planning application and approval". This was manifestly wrong, and Mr Hill accepted it was a mistake. I can't see this as an attempt to mislead the Authority as there never had been an application for a self-catering use nor could the one planning permission there was (for a home studio and storage) be confused with one. The Authority should have been well aware of the planning history so this error would not have misled them in any way. The Inquiry did not proceed on the basis there might be a 10 year period for a mixed use. this was never argued and so there was no opportunity to be misled by it.

    b) Correcting dates in his witness statement is perfectly normal and was irrelevant to the 4 year rule in any case.

c) The different dates for the commencement of the self-catering use of the Barn were not crucial to the outcome of the appeal. When making an LDC application it is usual to claim the use began when you can first demonstrate that to be so. It is not unreasonable to push that date back when further evidence comes to light, or it becomes clear you can get hold of witnesses to support an earlier date.

d) The 2019 request for information filled in by Andrew Hill for Passford Farm Cottage said in answer to the question "*purpose for which the premises are being used*" said "*self-catering, B&B, home*". Technically, at that time it was only being used for self-catering, but it had recently been a home and a B&B. It doesn't seem to me anything turned on this, the Authority issued the enforcement notice within 8 months in any event. It doesn't make sense that Mr Hill would mislead the Authority about the use at this stage, as he had already built up the 4 years necessary and the suggestion there was a B&B use going on would only serve to weaken his case not strengthen it. The fact that he gave his address as the appeal site and his wife's address as on the Isle of wight, when they owned both properties does not seem particularly relevant.

e) It was my impression that Mr Hill stuck to his evidence that he had no direct involvement in the day to day running of the self-catering use at Passford Farm Cottage. His later evidence was merely to explain how Mr Parsons' counter evidence was a mistake, not to change his story.

14. I do not consider there was any unreasonable behaviour by Mr Hill or his witnesses at the Inquiry in giving evidence, beyond the normal changes of mind, clarification of exact dates, rebuttals of counter evidence and so on.

Late or unhelpful evidence

15. There are a number of examples of this behaviour alleged by the Authority. Firstly, that the County Court witness statements were not revealed until January 2022. This may be so, but that still left a month to read and consider them. They were not of such a pivotal nature to the argument as to warrant longer. Secondly, the relationship between Annabelle Rowe and Brandon Hill was clear from Miss Rowe's statutory declaration and exactly where each of them lived does not seem to be important to me. It became clear as their evidence progressed, they both had a hand in running the self-catering businesses on the site, but Miss Rowe's involvement was stated in her statutory declaration. A much more detailed description of her activities was elicited during her time giving evidence, but nothing specifically new. Penelope Hill filled in a PCN in 2019 relating to the Barn and Lodge. It is not entirely clear but she seems to say that she owned them both and both were dwellings. The lodge had been occupied by Anne and Gordon Hill, Mr and Mrs A Hill (I assume this refers to her and Andrew) and Annabelle Rowe. The Authority suggest Brandon (who had lived in the Lodge with Annabelle) was deliberately missed out. Again I can see no reason for this as an act of subterfuge nor was it "*of critical importance for the NPA's understanding as to how the site was run and managed*", as the Authority now suggest.

16. There were several witnesses who were not part of the LDC applications, but none who did not provide witness statements or who came as a surprise to the

inquiry. The late representations concerning bookings in 2016 arose out of a question from me that there did not seem to be much activity then. It should have been provided before but it was not particularly onerous or lengthy to read. The appellants' counsel did spend a long time in examination in chief, but this was not unreasonable. During this process new evidence as such was not introduced, or if it was it was of a minor nature. The Authority also complain about the nature of the evidence provided, but this is up to the appellants. What they did provide was sufficient to demonstrate the points they were making which is all it needs to be.

17. None of these issues amount to unreasonable behaviour, but, in my experience, are typical of people attempting to put together a case over a long period of time, when they are not as aware of the importance of some of the statements they may be making as, for example, a planning barrister may be. As the appellant's barrister said it would be complete uniformity of evidence from all the witnesses over a 20 year period that would be suspicious. It is also not unusual for evidence to appear during a long inquiry, especially to counter contrary evidence that is also new.

18. However, lack of preparedness was also claimed and here the Authority have a point. It was clear to me from reading the Authority's statement of case that they were going to argue that if ground (d) succeeded it did so only because of deliberate concealment. This took the appellants' team by surprise and half the first day was lost in an adjournment to enable them to prepare to answer questions on concealment. This adjournment would have been unnecessary had the appellants' team prepared properly and amounts to unreasonable behaviour.

Fictitious ground (g)

19. The ground (g) was predicated on the occupation of the Lodge by Miss Rowe and future bookings for the Barn, particularly by Beau Batchelor. Miss Rowe, it turned out did not live at the Lodge but rented it out for self-catering. Her article 8 rights are not therefore engaged. The only future booking for which there was evidence was from Beau Batchelor, who it turned out made it up. In any event, the already generous compliance period would not be extended because of future bookings. The unlucky holidaymakers would simply have to have their money refunded. The ground (g) did indeed have no chance of success and to pursue it was unreasonable.

General unreasonableness

20. There is also a submission about general unreasonable behaviour, but an admission that it did not actually incur additional costs, so why it was included is unclear. In any event I don't think warning witnesses there might be a costs claim is particularly unacceptable and while the appellants' counsel was at times hectoring and verging on the aggressive, I considered this fell on the side of the line labelled 'irritating' rather than 'unreasonable'.

21. It is somewhat unfair of the Authority to complain about the length of the Inquiry and the number of witnesses called when it was they who were not convinced by the smaller number of declarations provided with the various LDC applications. Everyone called had something to say on the various questions that concerned the Authority. It is not unreasonable to attempt to make one's case as watertight as possible.

Conclusions

22. I conclude therefore that the appellant did act unreasonably so that unnecessary costs were incurred by the Authority in pursuing the ground (a) appeal for the Lodge and the Barn; introducing a ground (c) argument for the outbuilding that had no chance of success; failing to support the ground (g) argument which also had no chance of success and failing to prepare for a deliberate concealment argument. I shall therefore make a partial award of costs limited to those three matters.

Costs Order

23. 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 Mrs Hill (3246929) and Mr and Mrs Hill (3246928) shall pay to 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 the ground (a) appeal for the Lodge and the Barn; the ground (c) appeal for the outbuilding; the ground (g) appeal for the Lodge and Barn and the adjournment caused by failing to prepare for a deliberate concealment argument; such costs to be assessed in the Senior Courts Costs Office if not agreed.

24. The applicant is now invited to submit to Mr and Mrs Hill, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

Inspector