



Costs Decision

Inquiry held on 14 - 17 January, 29 January and 7 February 2025

Site visit made on 17 January 2025

by **Andrew McGlone BSc MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th March 2025

Costs application in relation to Appeal A Ref: APP/W0340/W/24/3346878 Land approximately 150 metres south of Brimpton Lane and west off Blacknest Lane, Brimpton Common RG7 4RS

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Brimpton Common Residents Group for a partial award of costs against Mr Jimmy Slater.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the change of use of the land to a residential site for occupation by Gypsies and Travellers, including the siting of 1 mobile home and 1 touring caravan plus 1 dayroom.
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Costs application in relation to Appeal B APP/W0340/C/24/3351139 Land south of Brimpton Lane and west of Blacknest Lane, Brimpton Common, Reading RG7 4RS

- 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 Brimpton Common Residents Group for a partial award of costs against Mr Jimmy Slater.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the change of use of the land to a residential caravan site for occupation by Gypsies and Travellers, including the creation of a new access to the highway and the stationing of a mobile home (the "Unauthorised Development").
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Decision

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

The submissions for Brimpton Common Residents Group ("BCRG")

2. The costs application was submitted in writing during the Inquiry, and written responses were made in reply after the Inquiry closed.

The response by Mr J Slater

3. The response was made in writing after the Inquiry closed, along with a supplementary submission.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (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 process.
5. The PPG states that "an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense." (Paragraph: 032 Reference ID: 16-032-20140306)

6. The BCRG's claim relates to procedural and substantive matters, which they say the appellant has led it to incur unnecessary costs in the appeal process.

Substantive

7. When Appeal B was lodged, the appellant submitted a ground (a) appeal along with grounds (b) and (g). The appellant has been professionally represented by the same company in both appeals and had been since the submission of the planning application subject of Appeal A.
8. Ground (a) is barred if the requirements of s174(2A) and (2AA) of the Act are met. Appeal A had, by the time the enforcement notice ("EN") was issued been submitted for consideration (24 June 2024) and was yet to be determined when Appeal B was submitted (2 September 2024). It was entirely up to the appellant as to how they wished to appeal the refusal of planning permission and the EN. Hence, a ground (a) appeal on Appeal B had no reasonable prospect of succeeding as it was statute barred from the outset due to Appeal A. That position ought to have been known to the appellant's representatives at the time, and this is inconsistent with the appellant's point in his response to the costs application that "there was no ground (a) appeal. There could not be one...and "it did not exist."
9. The BCRG was granted Rule 6 status for Appeal A on 15 July 2024 and on Appeal B on 30 September 2024. The BCRG submitted its Statement of Case (SoC) for Appeal B on 28 October 2024, shortly after the Case Management Conference (CMC) on 25 October 2024. The BCRG made submissions following the CMC that led to the appellant being advised on 6 November 2024 that ground (a) could not proceed. But between 2 September 2024 and 6 November 2024, Appeal B proceeded on grounds (a), (b), and (g) as per the appellant's submission. Hence, there was a period in the appeal process that ground (a) existed. Thus, the appellant's actions in bringing part of an appeal that could not succeed was unreasonable behaviour. Regardless of what costs the appellant incurred, his actions led to unnecessary costs being incurred by BCRG in responding to the ground (a) appeal on Appeal B between 30 September 2024, when they were granted Rule 6 status, and 6 November 2024.

Procedural

CMC

10. The first procedural aspect of the claim relates to the CMC that had been fixed for Appeal A on 28 August 2024. The appellant was advised of this date on 8 July 2024 along with the date when the inquiry would open (12 November 2024). BCRG was later advised of the CMC date when they were granted Rule 6 status. The appellant wrote to the case officer on 19 July 2024 to advise that the inquiry date was unsuitable, yet no issue was raised with the CMC date. The case officer confirmed on 22 July 2024 (and reiterated on 6 August 2024) that the November inquiry date was fixed and that the timetable would proceed as advertised.
11. On the afternoon of 27 August 2024, the appellant's agent informed the other main parties that they were no longer representing the appellant as they were unable to represent them for a November Inquiry. They further confirmed that they had no instructions to attend the CMC, and the appellant was seeking new representation.
12. The appellant had sufficient notice of the CMC and the inquiry and that those events were proceeding as planned. Given the agent's stated unavailability, there was adequate time for alternative representation to be found. It was the appellant's

responsibility to do so having submitted Appeal A. There is no evidence of the appellant's attempts here. In the alternative, there was also enough time for the appellant to give timely notice that they would not be able to attend the CMC along with the reasons why. Instead, that was left to the afternoon prior to the scheduled CMC despite the passage of time since they were notified of the CMC. While I determined that it would not be suitable to proceed, that was because of reasons of the appellant's own making, as they had not taken steps to secure alternative representation. The consequence of the appellant's inaction and timing of their communication could have been avoided and was unreasonable, as it caused the CMC to be rearranged. Further, it caused other participants preparing for the CMC, which was scheduled to start at 10am on 28 August 2024, to incur time and expense in abortive preparatory work. Even if other participants could spend their time on alternate matters on the 28 August 2024, that does not change the unnecessary or wasted expense incurred by the BCRG.

13. With the benefit of hindsight, I agree with the appellant that there was merit in having a single CMC, not two, and for whoever was to represent the appellant to be present at any CMC. However, this misses the point as at the end of August 2024, there was no Appeal B, so there was no need to have two CMCs. That scenario only arose on 2 September 2024 when Appeal B was lodged by the same agent who has represented the appellant and submitted Appeal A. It is also unclear whether any costs might have been saved or were indeed saved by having a single CMC. The fact that the agent could represent the appellant at the inquiry because Appeals A and B were subsequently linked does not alter the appellant's unreasonable behaviour either or the costs incurred by the BCRG.
14. Despite the agent continuing to engage with the case officer and the other main parties on Appeal A either side of the scheduled CMC on 28 August 2024, there was no mention of the EN (issued 12 August 2024) or of the possibility of Appeal B materialising. Given the timings, it would have been logical and reasonable to do so. It might have been a good reason not to proceed with the CMC, but this did not happen. While Appeal B was only lodged after the August CMC did not go ahead, that submission was evidently in progress prior to that as the appellant's Grounds of Appeal are dated 30 August 2024. Given the length of that document, work on it would have taken place on the previous days. Instruction would also need to have been given by the appellant beforehand. So, while I have explained that the appellant had acted unreasonably and caused wasted expense on this matter, the situation was only amplified by his behaviour around this time in connection with Appeal B, which, from what I can tell, provides context to the re-arranged CMC.

Land ownership

15. Article 13(1) of the Town and Country Planning (Development Management Procedure) Order 2015 (as amended) states that "an applicant for planning permission must give requisite notice of the application to any person (other than the applicant) who on the prescribed date is an owner of the land to which the application relates, or a tenant."
16. On the planning application form (Appeal A) dated 1 December 2023, the appellant declared by completing certificate A that 21 days prior nobody except himself was the owner of any part of the land to which the application related and had a freehold or leasehold interest in the land with at least 7 years left to run. The BCRG queried this in January 2024. The appellant's agent replied to say that their client had purchased the site, but it is yet to transfer on Land Registry due to a long backlog.

17. Appeal A was then made, and the appeal form stated that the appellant owned the land. The BCRG again queried this, raising the matter within its SoC for Appeal A and orally at the CMC, as it was important to know whether Appeal A was valid. The appellant was asked to clarify the land ownership situation and confirm whether the correct certificate had been completed by 4 November 2024¹. The appellant replied to say that “the appellant is the legal owner of the site. However, the Land Registry change is still pending. Notice was served, when requested by the LPA, on the Highway Authority due to the access, as denoted on the Site Location Plan, extending up to the highway boundary.”
18. On 27 November 2024, BCRG requested that the appellant provide a copy of the transfer of the registered title and the application to the Land Registry. On 12 December 2024, the BCRG confirmed that the issue of land ownership remained a matter in dispute with the appellant. Accordingly, I instructed both parties to address the matter within their Proofs of Evidence (PoE).
19. Mr Woods, on behalf of the appellant, within section 3.0 of his PoE, stated that the BCRG “have not bothered to properly review Land Registry documentation”...they “have presented zero evidence that the appellant does not own the land”...that “the appellant is not going to present such evidence either, as it is accepted by the LPA, and not an issue in dispute.” However, he went on to say that “the “land” remains under one title number. Evidently the respective submissions dividing the land up are yet to be formally determined...And so, the registered owner of the land remains the same woman who has owned the land since 1980.” He went on to explain that “I am aware that another party purchased the site and sold the land to the appellant shortly thereafter.” In paragraph 3.10 of his PoE Mr Woods stated that he had served notice on both the persons listed in Appendices 1 and 2 to his PoE.
20. Neither of those persons was the appellant. This led BCRG to conduct its own research with the Land Registry at its own expense. A Rebuttal was submitted by the BCRG, which comprehensively set out the chronology of land ownership and included supporting documents. The Rebuttal confirmed that the appellant took legal ownership of the site on 3 September 2024² (TR1 form) when the land was transferred to him “not for money or anything that has a monetary value.”
21. This lack of any monetary value reflected the appellant’s evidence that he was gifted the land from his brother-in-law, Mr Black, at the end of 2023. I have no reason to doubt the gentlemen’s agreement that the appellant had with Mr Black, but equally that was not documented and never disclosed even though repeated questions were raised about the validity of Appeal A. The TR1 form was completed after the BCRG queried the matter in its SoC and before the CMC, as well as prior to the correspondence between the BCRG and the appellant’s representatives, PoE’s and the Rebuttal from the BCRG.
22. At the time when the appellant completed the declaration on the planning application form, they were not the owner of the land to which the application related, nor did they have a freehold or leasehold interest in the land with at least 7 years left to run. The gentleman’s agreement between the appellant and Mr Black does not remedy the accuracy of the certificate. That was the appellant’s responsibility to complete accurately, even if it was completed on his behalf, as I am led to believe his representatives asked him about the land ownership situation.

¹ CD5.1, Paragraph 24

² CD8.4, Appendix 7

23. The notice served on two previous land owners in December 2024 sought to resolve the certificate issue. Sufficient time had passed before the inquiry opened to enable Appeal A to be treated as valid. While the notice served was done with good intention, it was incorrect as the appellant owned the land three months prior.
24. The upshot was that Appeal A was valid in any event. But, regardless of whether there was a gentlemen's agreement, the appellant and/or his representatives could have explained the situation and clarified that the legal transfer of the land occurred on 3 September 2024. There was more than adequate time and opportunity to do so and despite knowing that the legal transfer had happened, the issue was not clarified as the appellant had been asked to do. Whether the appellant advised his representatives correctly is irrelevant as it was his responsibility. It caused the BCRG to carry out unnecessary work because inaccurate or untrue information had been provided by the appellant, or they withheld information that would have prevented extra preparatory work that need not have arisen from arising. That work went to the heart of whether Appeal A was valid or not.
25. While the BCRG could have taken the notice served in December 2024 at face value and Appeal A being valid, it did not do so. If their further efforts had not yielded the outcome that it did, the cost of that exercise would have been its to bear. But that was not the case, given the notice served was also inaccurate and that situation was known to the appellant. As such, they incurred additional costs that they didn't need to in respect of carrying out research with the Land Registry, seeking advice, and preparing submissions on the matter. That was directly due to the appellant's actions, which amount to unreasonable behaviour.
26. As I have outlined the concern regarding ownership related to Appeal A not Appeal B. Therefore, s174(6) of the Act and whether the appellant was a relevant occupier by reason of a license is not relevant.

Personal circumstances

27. Part of the appellant's case related to the family's personal circumstances. Due to the passage of time, I asked the appellant to confirm or update their January 2024 statement ahead of the PoE being submitted so that the other parties could, in the interests of openness and fairness, address those circumstances in their PoE, and I could make my decisions based on the current situation. The BCRG had asked for a copy of that document before the CMC.
28. The appellant shared an unredacted version of their personal circumstances statement with BCRG's professional advisors on the basis that it was not shared with members of the BCRG itself. Nevertheless, the BCRG wrote to the appellant on 23 October and 27 November 2024, seeking agreement that the unredacted document could also be seen by the group's committee members. This was because the BCRG intended to call personal circumstances evidence, and they needed to instruct the professionals acting on its behalf as those professionals could not effectively take instruction without breaching confidentiality.
29. The BCRG confirmed that the document would not be circulated more widely, published, information made public, or retained longer than required. However, despite the appellant requesting the names of the people on the BCRG's committee, they did not receive them. The reasons behind both parties' actions are not for me, but neither have helped.
30. However, as the appellant had not confirmed or updated their personal

circumstances document by 2 December 2024, as agreed at the CMC, the BCRG wrote to the Inspectorate on 12 December 2024 about its concern that it had still not received any personal circumstances statement. On 16 December 2024, the BCRG was provided with a redacted version of the personal circumstances statement that formed part of the planning application. The following day, a redacted version of the appellant's PoE was shared with the BCRG.

31. I understand the appellant's wish for his family's privacy to be respected and upheld. There is also a need to treat personal information sensitively. However, the inquiry also needed to operate in an open, fair, and transparent manner, and to do so, the parties participating in it needed to be able to engage with the evidence and give their view on it having regard to the personal circumstances raised.
32. The appellant could have provided the BCRG with a redacted version of his January 2024 statement at any point in the process. It didn't. While the BCRG's professional advisors saw an unredacted version, those giving instruction could not see that or a redacted version until many weeks after I had asked the appellant to engage with BCRG's request about seeing the document. Whether or not the appellant's actions caused wasted expense at the Inquiry is irrelevant; the BCRG was put to unnecessary expense in repeatedly seeking a document that the appellant, late in the day, provided when it could and should have provided it much earlier. Failing to cooperate with the BCRG and providing this information on this matter in a timely manner was unreasonable behaviour despite being given ample opportunity to do so. My finding here relates to Appeals A and B, but only insofar as personal circumstances relate to ground (g) on the latter.

Statement of Common Ground Addendum (SoCGA)

33. I instructed the main parties at the CMC to agree a SoCGA relating to the need, supply and alternatives to help everyone clearly understand the parties' respective positions so that the inquiry was focused, and time was used effectively.
34. The Council and BCRG agreed a draft SoCGA, but the appellant did not comment upon it until 2 December 2024, when the agreed SoCGA was due for submission. I twice encouraged the appellant (and the other parties in my note of 4 December 2024) to engage and submit an agreed SoCGA. The appellant provided comments on 16 December 2024, but the following day the BCRG's submitted their PoE's.
35. Essentially, the appellant disagreed with the BCRG's stance on need and supply. They were entitled to hold their own view and present and test evidence at the inquiry on that matter. That was not unreasonable. However, the appellant did not heed the content of my CMC Summary Note which asked the parties to prepare a SoCGA with matters that were agreed on and those that were not. Hence, the appellant has not properly engaged in the appeal process or acted upon directions to save all involved time and expense. Nor did they do so in a timely manner.
36. The appellant recognises that they could have handled the matter differently and the SoCGA could have outlined the areas of disagreement. Regrettably, this realisation has come too late, and the lack of engagement did cause the BCRG to chase the appellant for their position and guess what their case may have been. However, in my view, even if the appellant had engaged and an agreed SoCGA had been submitted, the BCRG has not incurred additional costs over and above those which parties involved in the appeal process are expected to bear given the difference of opinion between the two parties.

Conclusion

37. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of (as topics referred to in submissions): failing to attend the original CMC without good reason (Appeal A); failing to complete certificates of land ownership and failing to provide evidence of land ownership (Appeal A); failing to provide details of personal circumstances (Appeals A and B ground (g)); and ground (a) on Appeal B. Therefore, a partial award of costs is warranted.

Costs Order

38. 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 Jimmy Slater shall pay to the BCRG, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in: failing to attend the original CMC without good reason (Appeal A); failing to complete certificates of land ownership and failing to provide evidence of land ownership (Appeal A); failing to provide details of personal circumstances (Appeals A and B ground (g)); and ground (a) on Appeal B. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

39. The applicant is now invited to submit to Mr Jimmy Slater, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR