



Costs Decision

by H Davies BSc (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date:

Cost application in relation to appeals reference: CAS-03076-T1S2G2 and CAS-03099-Z9D3D1

Site address: Land North West Of Holly Lodge (also known as Land at High Mass Cottage and Land at Church View), Five Lanes North, Five Lanes, Caerwent, Monmouthshire NP26 5PG

Costs application in relation to Appeal A - Ref CAS-03076-T1S2G2

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 175(7), 322C and Schedule 6.
 - The application is made by Ms S Connolly for a full award of costs against Monmouthshire County Council.
 - The appeal was against an enforcement notice alleging unauthorised operational development, including the provision of sheds, outbuildings, freight container, stable block, timber gates/fencing, hard surfacing and installation of septic tank.
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Costs application in relation to Appeal B - Ref CAS-03099-Z9D3D1

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
 - The application is made by Ms S Connolly for a full award of costs against Monmouthshire County Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission, for proposed change of use from agriculture to land for the keeping of horses (retrospective), proposed erection of stable block for 5 horses, erection of ancillary storage building, construction of manege.
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Decisions

1. The application for an award of costs is refused in regard to Appeal A and Appeal B.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Welsh Government Development Management Manual (Section 12.3 and Annex 12: Awards of Costs) advises that costs may be awarded against a party who has behaved unreasonably, and unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Matters Relating to Appeal A

3. The applicant claims there was a lack of precision in drafting the enforcement notice; imprecise terms specified for site remediation; a lack of interest in resolving matters through negotiation; and insufficient investigation.
4. In schedule 3 of the notice the Council set out their reasons for issuing the notice. These are sufficiently detailed and clear and linked to relevant development plan policies. As set out in my appeal decision, while the breach of planning control would have been more precisely worded by replacing the term 'provision' with 'erection', the breach is clearly defined as being unauthorised operational development as well as stating which items it relates to. I corrected the allegation to improve precision, but it was clear from the appeal submissions that the appellant understood what the notice related to.
5. The Council concluded, on the basis of a site visit, that both the container and the gate/fence were in breach of planning control. As can be seen from my decision, I disagreed with regard to the container. However, such considerations are a matter of fact and degree and the Council sufficiently explained the reasons for reaching their conclusion.
6. With regard to site reinstatement, the notice does not require reprofiling, just that it be returned to grassland. Appendix C simply shows the site prior to the unauthorised development to illustrate that it was undeveloped and set to grass. The requirement to return the site to grassland is sufficiently clear and precise.
7. I cannot comment on any discussion which may have happened on site for which I have no evidence. The Council are not obliged to negotiate before serving a notice. Notwithstanding this, from the timeline of events provided by the Council it seems that issues relating to unauthorised development at the site were raised as early as March 2021, with site meetings on at least 2 occasions (March 2021 and August 2022), along with other communications. This indicates ongoing and prolonged contact between the parties prior to the notice being issued.
8. The appellant suggests that removal of unauthorised development could have been achieved through the imposition of a planning condition attached to the grant of permission for the proposed stables and storage building. Even if the permission had been granted, imposition of such a condition would not have been in line with guidance on the need for conditions set out in Welsh Government Circular 016/2014 "The Use of Planning Conditions for Development Management". In addition, the operational development enforced against is distinct from and different to the operational development proposed in the planning application. It was therefore reasonable for the Council to deal with the unauthorised development separately to the application and serve a notice seeking to remedy the breach.
9. The photographs attached to the notice are not dated, although the Council state they were taken in July 2023, shortly before issuing the notice. They are evidence of at least one full and detailed site visit. The photos are also commensurate with what I observed during my site visit. I have been presented with no information which would lead me to conclude that there was insufficient investigation prior to issuing the notice.

Conclusion - Appeal A

10. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not justified. Consequently, this application for costs is refused.

Matters Relating to Appeal B

11. The applicant claims that the Council behaved unreasonably in failing to determine the application within the statutory time limits, where it was clear there was no substantive reason to justify delaying the determination of the application. They also claim the Council prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations, and failed to substantiate the impact of the proposal.
12. I note that officer recommendation was to approve the application, with additional details to be secured by condition. Planning committee reached a different conclusion, which they are entitled to do. The planning committee minutes from the meeting of 3rd October 2023 show there was discussion of a number of concerns which the committee felt had not been adequately addressed. This included waste management, drainage, landscaping, surfacing and ecology. Concerns also continued to be raised by third parties. Committee concluded that the number and type of unresolved issues were too significant to rely on conditions to resolve them. I consider that some, if not all, of the issues could have been resolved by conditions, but it was not unreasonable in this case for the committee to have proceeded as they did.
13. Additional information was requested to see if committee concerns could be overcome. The subsequently submitted information necessitated re-consultation. The final decision was therefore deferred to a later committee meeting. While I appreciate the frustration of the appellant at this delay, the procedure outlined is not unusual and does not constitute unreasonable behaviour. The additional information provided (which formed part of my consideration of the s78 appeal) would need to have been provided at some stage anyway to enable the development to proceed.
14. The application was returned to planning committee in January 2024, with three suggested reasons for refusal. These reasons are clear, precise and linked to relevant planning policy. I acknowledge that the reasons for refusal are not backed up by a full report or a detailed explanation, but they do outline the harm which planning committee felt would result from the development.
15. Notwithstanding the above, an appeal was made on 10 November 2023, on the basis that the Council had failed to give its decision on the application for planning permission within the appropriate period. Planning committee did subsequently resolve to refuse the application at a meeting in January 2024, but this was after the period for dual jurisdiction under the appeals process had ended. Consequently, the jurisdiction to determine the application was no longer with the Council. As a consequence, the lack of detail to support the suggested reasons for refusal is of little account, given that the decision sat with the appointed inspector.

Conclusion - Appeal B

16. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not justified. Consequently, this application for costs is refused.

H Davies

INSPECTOR