

Costs & Decisions Team

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Your Ref: 19/01478/OUT

Our Ref: APP/L3245/W/19/3241097

Date: 9 June 2020

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 320
LAND AT NANT GOCH, PEN-Y-BONT, OSWESTRY SY10 9JG
APPEAL BY B & B JONES LTD: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Housing, Communities and Local Government to refer to the Planning Inspectorate's letter dated 7 February 2020 confirming withdrawal of the appeal by B & B Jones Ltd. The appeal was against Shropshire Council's decision dated 15 May 2019 to refuse a planning application (19/01478/OUT) for "*Outline planning permission (all matters reserved) for the erection of agricultural workers dwelling and all associated works*", on land described above.

2. This letter deals with the Council's application for a full award of costs against the appellants as made in written correspondence dated 5 February and 3 March 2020. The appellants' agents replied on 26 February 2020. The costs representations, which have been made available to the parties, have been carefully considered along with all the available information.

Summary of the decision

3. The costs application succeeds and a full award of costs is being made. The formal decision and costs order are set out in paragraphs 16 and 17 below.

Basis for determining the costs application

4. In planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome of the appeal. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense. The application for costs has been considered in the light of relevant guidance (as published on the Gov.uk website under "Appeals"), the appeal papers, the parties' written costs correspondence and all the relevant circumstances.

Reasons for decision

5. All the available evidence has been carefully considered. The costs application, made following the withdrawal of the appeal, is for a full award of costs and on the basis that the appeal was unnecessary. The decisive issue is therefore whether or not the appeal was unreasonably made at the outset with the result that the Council incurred wasted expense in the appeal proceedings. Particular regard has been paid paragraphs 052 & 054 of the costs policy guidance. Paragraph 052 refers to the possibility of a procedural award of costs against an appellant in the event of a withdrawal of an appeal. Paragraph 054 explains that the right of appeal should be exercised in a reasonable manner and that an appellant is at risk of an award of costs if the appeal had no reasonable prospect of succeeding.

6. It is noted that the appeal, accompanied by statement of case, was made on 13 November 2019 with a request for a hearing to be held. The Inspectorate's procedural ("start date") letters of 27 November 2019 explained that the appeal would indeed be decided via a hearing. A timetable was set for the submission of appeal documentation and a date of 5 February 2020 was subsequently arranged for the hearing. The letter to the appellants' agents drew attention to the published guidance on awards of costs and warned that withdrawal of the appeal, at any stage of the proceedings without good reason, would place the appellants at risk of an award of costs.

7. The appeal proceeded and the parties submitted appeal documentation. The appellants provided, with the draft Statement of Common Ground (SoCG), financial information/accounts relating to their farm business – information not previously seen by the Inspectorate or the Council. The Inspectorate informed the parties, on 4 February 2020 (the day before the hearing) that the relevant Planning Inspector had agreed to accept this as "new information". The hearing opened as arranged on 5 February but the Planning Inspector decided to adjourn it for further information to be submitted in relation to the property known as "Brooklands". Following the adjournment of the hearing, but on the same day, an e-mail (16:00) from the appellants' agents announced the withdrawal of the appeal. They stated:

"... in the light of disclosures and the way they were represented by the Council at the hearing rather than in the Statement of Common Ground or when the Council were made aware of this information, we strongly feel that our clients position has been prejudiced and as agents we were not aware of this situation and were not able to adequately address this issue."

The Council's e-mail¹, also sent on 5 February, informed the Inspectorate that information had been obtained from the Council's tax section which showed that Mr & Mrs Jones' son, Matthew Jones, had been residing at a nearby property known as Brooklands (Pen-y-Bont, Oswestry) and had done so prior to any planning applications for a dwelling on the appeal site. The Council stated that this was contrary to what the appellants' agent had indicated at the hearing – he had indicated that circumstances had only recently changed in relation to on-site living arrangements. The Council's e-mail also expressed concern about the late submission of the financial information by the appellants.

8. In response to the costs application the appellants' agents made the following points:

- At the hearing the Council confirmed that they were not making an application for costs
- The Council had admitted (e-mail of 5 February) that they were aware of information (concerning residential details) prior to the hearing but did not disclose it
- The Council had not raised, in their Decision Notice or Officers' Report, the issue of alternative accommodation or financial information as an issue

¹ e-mail (16:56) containing the costs application.

- The appellants' position had been prejudiced and there had been no opportunity to address the issue other than to withdraw the appeal and to recommence the planning application process
- The appeal was not a waste of public money. It raised issues that needed further explanation which unfortunately could not be addressed at the hearing

9. In their costs correspondence the Council indicated that it was only after carrying out a recent search, in relation to other available property (at the time of the hearing) that they discovered the information about Brooklands. It was only after further information was obtained about this matter, and the withdrawal of the appeal, that the costs application was made. As regards the question of alternative accommodation, this was referred to at 6.3.4 of the Officers' Report and at point 8 of the Council's appeal statement. The Council stated that the appellants had not been prejudiced by the Council's comments at the hearing about residential accommodation. Council tax records showed that the appellants' son and his then-partner had been residing at Brooklands since 1 April 2017. The Council claimed that information concerning the residential occupation of Brooklands had been withheld by the appellants.

Conclusions

10. Having made the appeal it is considered that it was for the appellants, barring a material change in circumstances in the Council's case on appeal or other material change in circumstances, to pursue it to a formal determination. However, despite the costs warning given in the Inspectorate's "start date" procedural letter, they decided to withdraw it in favour of, it appears, pursuing the planning application process afresh with the Council. The circumstances leading to the decision to withdraw the appeal have therefore been carefully examined.

11. The basis for the appeal proposal was that Mr & Mrs Jones would vacate the farmhouse to move to a residential dwelling to be built elsewhere on their land thus allowing their son to occupy the farmhouse and succeed them in running the farm business (although Mr & Mrs Jones would continue to support the overall farming business and help meet the needs of the farm). The appellants contended² that there were no available dwellings within a three mile radius that were suitable for them. There was no indication that their son was residing at a different location to the farm. The appellants' statement of case (paragraph 6.8) had stated that "B & B Jones' son will continue to live in the farmhouse and that the proposed dwelling will be occupied by Mr and Mrs Jones". It was the Council's case³ that there was no essential and functional requirement for a dwelling on site, as proposed, and no consideration of alternative dwellings had been put forward by the appellants. The Council stated that it was the needs of the business that required planning consideration and not the preferences of the persons concerned.

12. It appears that, at the hearing, the Council explained that they had recently discovered evidence that the appellants' son was not residing at the farmhouse and had moved to Brooklands. A short adjournment of the hearing allowed the appellants' agent to contact them (the appellants were not present at the hearing) and they confirmed that their son was indeed residing at Brooklands. This appears to be contrary to the information, as available before the hearing opened, that Mr & Mrs Jones and their son were living at the farmhouse. It was then the appellants' decision to withdraw the appeal. The inference appears to be that Brooklands represented a source of accommodation in sufficiently close proximity to the farm. Although the appellants would have had the opportunity to address the issue (concerning Brooklands) and to pursue the appeal to a formal determination they stated that their position had been prejudiced. It was their decision to withdraw the appeal.

² SoCG (Council's Comments)

³ 9.1 of the Council's appeal statement refers

13. The conclusion drawn from the available evidence is that the appellants decided to withdraw the appeal because they considered that the information obtained by the Council, about the residential accommodation at Brooklands, was detrimental to the prospect of success for the appeal. While the information amounted to a change in circumstances that had hitherto been unavailable on appeal it was nevertheless information which would have been known by the appellants (if not their agents) at the outset of the appeal. It was therefore their decision to submit the appeal on the basis of information which excluded any reference to Matthew Jones' residence at Brooklands and to then withdraw it only when this information came to light at a late stage in the appeal proceedings. For the avoidance of doubt, no reason is seen to conclude that the Council were in a position to highlight this information any sooner than they did. Indeed, if they had been in a position to introduce the information at an earlier date it seems unlikely that they would have chosen to wait until the hearing to do so as an earlier withdrawal of the appeal would have served to help reduce the amount of expense incurred by them in the appeal proceedings.

14. In the circumstances described the Secretary of State concludes that the appellants actions in submitting the appeal and then withdrawing it in the light of information introduced by the Council at the hearing – information which should have already been within the appellants' knowledge – amounts to unreasonable behaviour. As a result the Council incurred wasted expense in connection with appeal proceedings. In the particular circumstances a full award of costs is considered justified.

15. The Secretary of State does not decide the amount of costs payable. This is for the parties' agreement or via an application for a detailed assessment in the Senior Courts Costs Office.

FORMAL DECISION

16. For these reasons, it is concluded that a full award of costs against the appellants, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

COSTS ORDER

17. Accordingly, the Secretary of State for Housing, Communities and Local Government in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78 and 320 of the Town and Country Planning Act 1990, and all other powers enabling him in that behalf, **HEREBY ORDERS** that B & B Jones Ltd shall pay to Shropshire Council their costs of the appeal proceedings before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 1 above.

18. You are now invited to submit to the appellants' agents details of those costs with a view to reaching agreement on the amount. A copy of this decision letter has been sent to them.

Yours faithfully

John Gardner

Authorised by the Secretary of State
to sign in that behalf

