



Costs Decision

Site visit made on 3 January 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 5 January 2017

Costs application in relation to APP/Q3305/X/16/3155196 Old Down Caravan Site, Emborough, Wells, Somerset BA3 4SA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by JBS Park Homes for a full award of costs against Mendip District Council.
- The appeal was made against the decision of the Council to refuse to grant a certificate of lawful use or development [LDC] for: "Use of land for the purposes of siting of caravans for the purposes of human habitation, excluding the months of May, July 2nd to August 1st and September 2nd to October 2nd".

Formal Decision and Costs Order

1. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, IT IS HEREBY ORDERED that Mendip District Council shall pay to JBS Park Homes, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
2. The Applicant is now invited to submit to Mendip District Council, to whom a copy of this decision has been sent, the 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 Court Costs Office is attached.

The case for JBS Park Homes

3. The case for JBS Park Homes is set out in writing and since there is a public record of that submission I do not propose to rehearse it here.

The response by Mendip District Council

4. The response by Mendip District Council is conspicuous by its absence. I have received an assurance from the Enforcement Appeals Officer that the Council was sent a copy of the application under cover of a letter dated 7 December 2016 but that no response has been received. I intend to proceed on this basis.

Reasons

5. The Planning Practice Guidance 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.
6. The Planning Practice Guidance says: "*Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of*

the matter under appeal, for example, by unreasonably refusing or failing to determine ... applications ... Examples of this include: ...failure to produce evidence to substantiate each reason for refusal on appeal [and] acting contrary to, or not following, well-established case law”¹.

7. The *Planning Supporting Statement* refers to 3 court judgements and 2 appeal decisions. The grounds of appeal refer to 5 court judgements and 4 appeal decisions [albeit with some duplication]. However, as has been submitted, the Council has not referred to any of these in the email correspondence between the parties prior reaching a decision, in its delegated report, or in its appeal statement. It is therefore unclear how or to what extent, if any, the Council has taken account of what I consider to be well-established case law.
8. I do not agree with the submission that reference to the site licence and the management regime is necessarily irrelevant because it might have been material in showing that the 1999 planning permission was implemented. That was material to the manner in which the Council read the conditions that governed the use of the site. However if it had interpreted planning permission 003 and, in particular, condition 5 properly, having regard to the arguments that were advanced, and thereafter applied the principles of *Newbury*, it is difficult to see how it would have arrived at the conclusion that it did. As I have noted in my main decision, the argument with regard to materiality appears to have passed the Council by entirely. The Council's statement at appeal stage adds little to the delegated report and does not substantiate the reason for refusal. However, above all else, it is the complete failure to even mention well-established case law and appeal precedent that is overriding and inevitably leads me to the conclusion to which I am drawn.

Conclusion

9. For the reasons identified above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. It is therefore appropriate to make a full award of costs as set out in the formal decision and costs order.

Pete Drew
INSPECTOR

¹ Source; Paragraph ID 16-049-20140306.