
Cost Decision

Site visit made on 3 April 2017

by Sandra Prail, MBA, LLB (Hons), Solicitor (non practising)

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

Decision date: 27 April 2017

Costs application in relation to Appeal Ref: APP/U1430/X/16/3164696 Land at Meadowview Park, Crazy Lane, Sedlescombe, Battle, TN33 0QT.

- 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 Mr Keith Dighton for a full award of costs against Rother District Council.
 - The appeal was against the refusal to grant a certificate of lawful development (LDC) for proposed siting of static caravans for year round residential use.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The *Planning Practice Guidance* (the Guidance) advises that irrespective of the outcome of the appeal, 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.
3. The Appellant cites fourteen issues in support of his costs claim (labelled (a) to (n)).
4. A number of these issues concern the planning merits of the proposal. Issue (c) is that the Council accepts that the visual impact of static caravans would be minimal. Issue (e) is that the site is secluded and has minimal impact on the Area of Outstanding Beauty. Issue (f) is that static caravans and touring caravans look similar. Issue (h) is that any operational development required would have minimal impact compared to what is currently in place pursuant to the existing site licence and /or allowed for touring caravans. Issue (g) is that any operational development would be permitted development in line with national standards.
5. But this appeal concerns the facts of the case and relevant planning law and judicial authorities. The planning merits of the development are not relevant. The Council has not argued these points other than in the context of interpretation of the planning permission in dispute between the parties and its argument that there has been a material change of use. The Council not acted unreasonably in raising these issues.

6. A number of the issues raised by the Appellant suggest that the Council has failed to take into account relevant considerations.
7. The Guidance indicates that a local planning authority is likely to be at risk of an award of costs where it has prevented or delayed development which should be clearly be permitted or deliberately concealed relevant evidence at appeal.
8. Issue (i) is that the Council has been unreasonable to ignore the planning history and their own planning files. But I am not persuaded that the Council has done so. The onus in this appeal rests on the Appellant and there is nothing before me that persuades me that the Council has deliberately concealed relevant evidence.
9. The Guidance indicates that a local planning authority is likely to be at risk of an award of costs where, for example, it has acted contrary to, or not followed, well established case law.
10. A number of the issues raised by the Appellant concern points of dispute between the parties and the correct interpretation of planning permissions according to planning law and judicial authorities. The first issue (a) is that the Council accepts that the year round residential use of touring caravans is lawful. Issue (b) is that the Council has granted planning permission specifically for permanently sited touring caravans without any condition restricting the type of caravan to 'touring.' Issue (d) is that the Council has accepted Meadowview Park as a 'caravan site (generally)'. Issue (j) is that the Council has been unreasonable to ignore the legal definitions of 'caravan' and 'caravan site'. Issue (k) is the Council has included out of date information, case law and decision, rather than correctly interpreting up to date authorities and referring to modern business practices.
11. The Council has set out its views on each of these points and whilst I do not agree with their reasoning that does not make it unreasonable. The case made by the Council was arguable and therefore I do not find that they acted contrary to or failed to follow well established case law.
12. The Guidance indicates that a local planning authority is likely to be at risk of an award of costs where it prolonged proceedings by introducing a new reason for refusal.
13. Issue (n) is that the Council has submitted a new argument in its appeal statement, abandoning its earlier argument based on the case of Wenman¹. Whilst it is correct that the Council referred to the Wenman case in its report on the application the Council's reasoning was not limited to that one case. I do not consider that the Council has introducing a new reason for refusal in this appeal.
14. The Guidance indicates that a local planning authority is likely to be at risk of an award of costs where it has failed to enter into pre application discussions, or to provide reasonably required information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether or the issues to be considered being narrowed thus reducing the expense associated with the appeal.

¹ Wenman v Horsham DC [2016]

15. Issue (l) is that the Council excluded correspondence relating to the Council's refusal to discuss the legal position unless in a formal appeal or without prejudice. Issue (m) is that the Council has not recognised that a face to face without prejudice meeting would cost the Appellant more than open email correspondence and would not be appropriate for a planning appeal as there is no mechanism for the planning inspectorate or the costs officer to consider such correspondence. In the second part of issue (n) the Appellant complains of the Council's approach to communication and its attitude to costs.
16. On the evidence before me I am not satisfied that the Council's approach has resulted in unnecessary or wasted expense. I am not satisfied that even if further information or communication had taken place as suggested by the Appellant that the Council's position would have changed or the issues narrowed.
17. The parties have taken different approaches to the interpretation of a planning permission and the application of judicial authorities and planning appeal decision to the particular facts of this case. The Council took Counsel's Opinion on its approach and whilst I do not share their views I find no unreasonable behaviour that has led to the Appellant incurring unnecessary or wasted expense.

Conclusion

18. For the reasons given I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has not been demonstrated. I therefore conclude that the award of costs sought by Mr Keith Dighton against Rother District Council is not justified in whole or part. The application should be refused.

S. Prail

Inspector