

Costs Decision

Site visit made on 15 June 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 11 July 2017

Costs application in relation to Appeal Ref: APP/C1950/X/16/3166163 Land at The Firs Park, Woodside Lane, Hatfield AL9 6DG

- 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 and Mrs G Miller for a full award of costs against Welwyn Hatfield Borough Council.
 - The appeal was against a refusal to grant a certificate of lawful use or development (hereinafter "certificate") for "the proposed use of land within the existing caravan site boundaries for the siting of static caravans without restriction on the layout of the land or the number of caravans up to a maximum of 8 caravan units on the site at any one time".
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Decision

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

Reasons

2. 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.
3. The gist of the costs award being sought relates to the alleged unreasonable behaviour of the Council with respect to the substance of the matter under appeal. This claim for costs has been judged on its merits, with all the evidence from the parties being taken into account and with regard to the circumstances relating to the application and to the appeal. Having done so, I consider that the Council erred in 3 key ways.
4. Firstly and perhaps most importantly, the Council set much store on the alleged change to the definable character of the planning unit when viewed from the main entrance of the site. Given the commentary in the previous appeal decision (dated 23 February 2016) about this specific viewpoint, the Council was obliged to produce very convincing and detailed evidence about what it believed would actually be seen from the main site entrance. Neither the Council's statement nor its delegated report covered this matter in any detail. The assertions made about the proposal's impact from this viewpoint were vague and generalised. Any objective analysis from this viewpoint could only logically produce one conclusion, along the lines advanced by the previous Inspector, by the appellant and by myself in my appeal decision.

5. Secondly, I am not convinced that the Council gave a fully rounded assessment of the *John Childs* case law. A reader of the Council's delegated report is not told the full background and yet the decision is said to be "of assistance in this case." There are in fact strong differences between the context of that site and the appeal site. The delegated report leaves the case rather open-ended and gives the impression that the Council did not delve deeper into the full implications of that case. In short, the planning unit in the appeal case before me is certainly not an open field with a very small number of caravans and the number of caravans within it would not be doubled. The planning consequences involved in the 2 cases are wholly different. To demonstrate that it had not misled itself with this case law, the Council would need to have made these relevant matters far clearer.
6. Thirdly, I consider that the Council should have attached more weight to its own decision to issue a certificate in June 2016 shortly before the subject application was submitted. This certificate encompassed an internal road stretching across the open space towards the eastern boundary, placed a park home at the eastern extremity of the site, indicated a caravan on each side of the new internal road and departed from the established oval-shaped service road found around the main body of the site. This fallback was very likely to be carried out. If implemented as approved (and of course it has now been substantially implemented), most reasonable observers would, in all probability, wonder why there was such a large gap between the 2 caravans and anticipate the siting of others to complete the nascent street scene. Even if this road layout could be seen from Woodside Lane (and I do not consider that it can be seen), I found it perverse for specific objections about this layout to be held against the appeal scheme before me.
7. The substantive flaws exhibited by the Council amounted to unreasonable behaviour. They gave rise to the appeal being made and this resulted in unnecessary expenses for Mr and Mrs Miller. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 Welwyn Hatfield Borough Council shall pay to Mr and Mrs G Miller, the full 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.
9. The applicant is now invited to submit to Welwyn Hatfield Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Dale

INSPECTOR