
Costs Decision

Hearing held and site visit made on 5 July 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 01 August 2017

Costs application in relation to Appeal Ref: APP/R3650/X/16/3161457 15 Crondall Lane, Farnham, GU9 7BG

- 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 Philly Hook ("the Applicant") for a full award of costs against Waverley Borough Council ("the Council").
 - The Hearing was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) for the siting of a caravan for ancillary use to the dwelling at 15 Crondall Lane.
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Decision

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

Procedural Matters

2. The Appeal Decision in respect of this case is dated 7 July 2017 ("the Appeal Decision").
3. I explained in paragraph 9 of the Appeal Decision that the Council had issued a Certificate of Lawful Use or Development for a caravan to be sited at No. 15 and used ancillary to the residential use of the dwelling-house ("the Approved Certificate").

The submissions for the Applicant

4. The costs application was submitted in writing and read out at the Hearing.

The response by the Council

5. The response was made orally at the Hearing.

Reasons

6. The Planning Practice Guidance (the PPG) advises that:
 - a) 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.
 - b) 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 defending appeals. Examples of this include:

- i) Acting contrary to, or not following, well-established case law.
 - ii) Not determining similar cases in a consistent manner.
7. I have explained in paragraph 8 of the Appeal Decision that at the Hearing the Council withdrew their reason for refusal based on whether the proposed structure would be a caravan. They did this due to the information on a plan which accompanied the Applicant's Statement of Case. However, I explained in paragraphs 4 to 6 of the Appeal Decision that the Applicant had made it perfectly clear that the application sought to establish the lawful use of a **caravan**. In my view this should have been sufficient for the Council to determine that the application on that basis.
8. I agree with the Applicant that the Council should have determined the application for the LDC on the basis that the caravan would be used in the way described by the Applicant in the application representations. In an application for a **proposed** use there is no need to make a determination as to whether the Applicant will use the caravan in any way other than as described within the application because the Certificate itself explains that any use which is materially different from that certified in the LDC may result in a breach of planning control which is liable to enforcement action by the local planning authority.
9. I do not consider that it was necessary for the Council to consider what would happen if the residential use of No. 15 ceased and the caravan was to be used as an independent unit of accommodation. This was not the matter for which the LDC was sought.
10. I also agree with the Applicant that it was not necessary for the Council to consider whether the size and scale of the caravan was acceptable. I explained in paragraph 13 of the Appeal Decision why the Applicant required a caravan of the size sought. Whilst prima facie having 8-bedrooms in the combined house and caravan may seem excessive the bedrooms in the caravan could only be used as ancillary accommodation to the main house at No. 15 or for other ancillary uses as explained in paragraph 15 of the Appeal Decision.
11. The Council accepted at the time the Approved Certificate was granted that it was the actual use to which a caravan was put rather than its potential use which is important in deciding whether a Certificate of Proposed Lawful Use should be granted. I therefore agree with the Applicant that it is inconsistent that the Council should have approached the appeal application on a different basis to which they dealt with the Approved Certificate application. Had they approached the appeal application on the same basis there is no doubt in my assessment that they would have concluded that the LDC sought should be issued.
12. I therefore find, for the reasons explained above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 Waverley Borough Council shall pay to Philly Hook, 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.

14. The Applicant is now invited to submit to the 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.

Tim Belcher

Inspector