
Costs Decisions

Hearing Held on 16 August 2017

Site visit made on 16 August 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 30 August 2017

Costs application A in relation to Appeal Ref: APP/L2250/W/16/3162157 Goldpark Leisure Holiday Park, Canterbury Road, Wingmore, Kent CT4 6LP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs William and Genty Smith for a full award of costs against Shepway District Council.
 - The hearing was in connection with an appeal against the refusal of an application for planning permission for substitution of a static caravan in place of a touring caravan for use as a warden unit.
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Costs application B in relation to Appeal Ref: APP/L2250/W/16/3162157 Goldpark Leisure Holiday Park, Canterbury Road, Wingmore, Kent CT4 6LP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Shepway District Council for a full award of costs against Mr & Mrs William and Genty Smith
 - The hearing was in connection with an appeal against the refusal of an application for planning permission for substitution of a static caravan in place of a touring caravan for use as a warden unit.
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Decisions

Costs application A: Appeal Ref: APP/L2250/W/16/3162157

1. The application by Mr & Mrs William and Genty Smith does not succeed.

Costs application B: Appeal Ref: APP/L2250/W/16/3162157

2. The application by Shepway District Council for a full award of costs is allowed in the terms set out below.

Procedural matter

3. 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.

Costs application A

The submissions for Mr & Mrs William and Genty Smith

4. The application was made in writing and in summary says that the Council:-

- Failed to recognise the application was simply for replacing a touring caravan with a static caravan.
- Failed to recognise there are no holiday or seasonal restrictions on the use of the existing caravans.
- Failed to recognise a caravan site licence is subordinate to a planning permission and/or a lawful development certificate (LDC).
- Failed to recognise touring caravans may be in the same flood risk category as static caravans.
- Failed to engage with the appellant in order to avoid an appeal.

The response by Shepway District Council

5. The response was made in writing and is summarised below.

- The Council determined the application in accordance with the Development Plan and the Framework and set out the reasons for refusal clearly.
- The Environment Agency (EA), as statutory consultee, recommended that the application was refused on flood risk grounds.
- The refusal of the application was entirely reasonable.

Further submissions for Mr & Mrs William and Genty Smith

- The Council failed to refute any of the individual points made in the costs application.
- The EA appears to have been misled as to the nature of existing planning rights on the appeal site.
- The Council has not acknowledged that the EA stated that it had no objection to the static being sited elsewhere on the site.
- The Council has put in a false document purporting to be the LDC for the site and this has led to the need for extra work and ensuing costs.

Reasons

6. The appeal was made under S78 of the Town and Country Planning Act 1990 (the Act) and thus it was incumbent on the Council to determine the application in accordance with the Development Plan unless material considerations indicated otherwise.
7. The Council's written statement addressed the relevant policies and the other material considerations raised by the applicants. This was reinforced by verbal evidence at the hearing. The evidence given was consistent with pre-application advice given to the applicants about 6 months before the submission of the application and thus Mr & Mrs Smith should not have been surprised by the Council's decision.
8. The Council did refer to the LDC and the caravan site licence in its statement but this was in the context of the history of the site and, as was made clear in paragraph 9.4 of their statement the Council determined the application purely on its planning merits. The Council's witnesses clearly understood that the LDC had no holiday or seasonal restrictions.

9. The EA consultee response refers in terms to the change of use from a touring caravan to a static caravan, effectively the same development as that described by the appellants as a 'substitution'. The consultee response made it quite clear that, on flood-risk grounds, a site on the higher land within the caravan park would address the flooding concerns. I have no indication whether or not the applicants saw this consultee response prior to the refusal of the application but there is no evidence to suggest that the applicants sought to overcome this reason for refusal either during the determination of the application or at appeal stage. There is simply no evidence that the EA was misled.
10. The applicant refers to a 'falsified' document and the Council agreed that at an early stage in the appeal process, the submitted LDC was not the final approved document. However the Council apologised for this error and the correct document was appended to the Hearing Statement. Consequently there is no evidence that this has led to wasted costs in the appeal.
11. Finally in terms of post decision discussions, it appears that the applicant sent an email to the Council on 28 July 2016, suggesting that the Officer's Report contained factual discrepancies and apparent misunderstandings. The email suggested that a free resubmission would be appropriate. It appears that the appellants suggested no amendments to the refused application. In the circumstances of the absence of any alterations to the proposal it was not surprising that the Council in its response did not invite a resubmission.
12. For the reasons I have given there is no evidence of unreasonable behaviour by the Council leading to unnecessary or wasted costs in the appeal process and the application fails.

Costs application B

The submissions for Shepway District Council.

13. The submissions were made in writing and are summarised below.

Procedural matters

- The submission of a Hearing Statement two working days before the date of the hearing resulted in the need for the original hearing to be postponed and resulting costs.
- The appellants argued that the development did not require planning permission and in these circumstances should have submitted an application for an LDC, not an application for planning permission.

Substantive matters

- The application proposed a new residential development in highly designated countryside which is contrary to both national and local policies. There was no demonstrable justification or material considerations that would outweigh the need to protect the countryside.
- In the light of the professional advice available to the respondents and the pre-application advice given by the Council it can have been of little surprise that the application was unsuccessful.

- The application was not for the substitution of a touring caravan as applied for because the LDC did not limit the number of touring caravans on the site.
- The development is clearly not in accordance with the development plan and the appeal had no reasonable chance of success.

The response by Mr & Mrs William and Genty Smith

14. The response was made orally and is summarised below.

- The appeal procedure was changed from Written Representations to a Hearing on 23 March 2017. The letter from the Planning Inspectorate advising of this change of procedure did not give the respondents an opportunity to put in a Hearing Statement.
- The Hearing Statement put in on 8 June 2017 was put in at the request of the Planning Inspectorate and did not include new information.
- It was considered more diplomatic, because it was anticipated that the development would be controversial, to put in a planning application rather than an application for a lawful development certificate. This did not amount to unreasonable behaviour.
- The lawyer acting on behalf of the respondent was unaware of pre-application advice that had been given by the Council.
- The application was for a substitution of one type of caravan for another and the numbers on the site are physically limited by the site boundaries.

Reasons

15. There were a number of procedural errors by the Planning Inspectorate in the administration of this appeal and its correspondence with the appellant was unclear. In these circumstances, and although the professionally advised respondents should have been aware of the normal timetable that would apply, there were mitigating circumstances which justified the late submission of the Hearing Statement. Accordingly this was not in itself unreasonable behaviour.
16. I acknowledge the respondents' reasons for putting in a planning application rather than an application for an LDC. However in these circumstances the application fell to be determined in accordance with the Development Plan unless material considerations indicated otherwise. Accordingly it is surprising at best that the appeal statement did not consider that planning application against the development plan. Indeed reference to the adopted policies and the Framework in relation to the current proposal were all but absent from the main hearing statement.
17. If the correct approach had been taken, it would have been abundantly clear that the appeal had little chance of success which was consistent with the pre-application advice given¹.
18. The lawfulness of the proposed development was not before me and thus had little or no bearing on the outcome of this appeal which had to be determined on its merits rather than on its lawfulness or otherwise. I made this clear at

¹ It is unfortunate that the respondents do not appear to have told their legal advisor about the pre-application advice but this is a matter outside the control of the Council.

the Hearing, where I also gave an opportunity for the parties to comment, and it was reaffirmed in my decision.

19. The Statement of Common Ground demonstrated that both parties agreed the relevant policies and associated guidance in the Framework. Notwithstanding this the respondents' appeal statement did not address (at all) the reasons or policy justification for refusal. Thus the appeal statement was seriously flawed because it was made on grounds which are irrelevant to the planning merits. Consequently I conclude that the whole appeal was unnecessary because it was based on erroneous grounds and thus had no reasonable chance of success.
20. Whilst on procedural grounds, I find there are mitigating circumstances for the late evidence; I also find that the whole appeal was unnecessary. If the respondents considered that the subject development was lawful the correct approach would have been to test it by an application for an LDC. In this way the entire appeal could have been avoided. This error was reinforced by the respondents' failure to address the development plan in their hearing statement and the hearing itself when it would have been obvious that the appeal had little if any chance of success.
21. Consequently all the costs incurred in defending the appeal and the associated cost claims were unnecessary and comprised wasted expense in the appeal process.

Application B: Costs Order

22. 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 Mr & Mrs William and Genty Smith shall pay to Shepway District Council the full costs of the appeal proceedings described in the heading of this decision, also including the expense incurred in the costs applications; such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The Council is now invited to submit to Mr & Mrs William and Genty Smith to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Sukie Tamplin

INSPECTOR