



Costs Decision

by Jean Russell MA MRTPI

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

Decision date: 3 July 2020

Costs application in relation to Appeal Ref: APP/J3720/X/19/3223568 Welford Park, Barton Road, Stratford-on-Avon, CV37 8EY

- 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 Stratford-on-Avon District Council for a full award of costs against Mr Richard Mitchell on behalf of the occupants of 1, 2, 20, 21, 22, 24, 25, 26, 27, 29, 30, 31, 34, 35, 36, 37, 59, 62, 63, 64, 66 and 67 Welford Park.
 - The application is made pursuant to an appeal against the refusal of the Council to issue a certificate of lawful use or development for a proposed use described as 'the stationing of caravans on the application site for residential use throughout the year'.
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Decision

1. The Council's application for a full award of costs is refused.

Preliminary Matters

2. The costs application was submitted and responded to in writing. It is unnecessary for me to summarise the parties' cases since their representations are on record.
3. The Planning Practice Guidance (PPG) provides that where a party to a planning proceeding has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the process, they may be subject to an award of costs¹.

Reasons

4. The PPG states that an appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding². The parties have addressed this matter in detail, but I can be brief: it must be clear from my appeal decision that there was no *realistic* prospect of an LDC being granted. The use of the site will be governed by the 2006, or possibly the 1994 or 1981 permissions – and no matter which permission is operative, the proposed use would be in breach of one or more extant conditions.
5. That finding does not show, however, that the appellants behaved unreasonably. The PPG notes that, when considering whether to make an award of costs, the Inspector has discretion to take extenuating circumstances into account³. I find that guidance pertinent. The appellants have raised what they summarised as 'human rights' issues; those representations were not relevant to my appeal decision, but I can take them into account in considering this costs application.
6. The appellants stated that *'they have never caused any intentional cost to the [Council]...the application [has] only ever been intended to provide these park homes to be classed as lawful to be lived in...by these vulnerable elderly residents.'*

¹ PPG paragraph ref ID: 16-028-20140306

² PPG paragraph ref ID: 16-053-20140306

³ PPG paragraphs ref ID: 16-031-20140306 and 16-051-20140306

Without prejudice to any future proceedings, there is evidence before me that the appellants live on the site for (at least) 11 months of the year, and some of them are elderly and/or in poor health. I am satisfied that they made the LDC application and appeal in a genuine attempt to regularise and secure their homes.

7. I also consider that, while the appeal was ultimately straightforward to determine, taking the correct approach to it required some knowledge of planning law. The onus was on the appellants to make their case and they sought to discharge that duty by appointing LSL Solicitors to make the application and appeal on their behalf. LSL Solicitors proceeded to act professionally in liaising with the Council and Planning Inspectorate, and by researching their brief and compiling evidence.
8. However, it would appear that LSL Solicitors is a 'licensing and safety' rather than planning law practice, and they certainly did not grasp that evidence of existing use would not assist an application made under s192. They did not interpret the 2006, 1994 or 1981 permissions properly, and they failed to appreciate that an LDC could not be granted for a proposed use in breach of a condition in force. The appellants could not have known that LSL Solicitors were on the wrong path.
9. Another error by LSL Solicitors was to rely on (in short) the 'material change of use issue' – but the Council grappled with that in their delegated report on the LDC application, made it their second reason for refusal, and pursued the point in their statement of case and proof of evidence. The Council disagreed with LSL Solicitors as to whether there had been a material change of use, and distinguished other appeals which had turned on that question – but they still gave a convincing impression of accepting that material change of use was a 'key issue'. It was not unreasonable for the appellants to consider it worth pursuing the point at appeal.
10. Finally, the appellants prepared for the inquiry on the basis that their solicitor would be unable to attend the event. The appellants themselves then responded to all correspondence and submitted all representations relating to and following the cancellation of the inquiry. It seems at least possible that the appellants did not receive any professional advice on how to respond to the Council's statement of case, proofs of evidence and/or costs application – and yet they sought to do so and that assisted me.
11. The PPG states that the right of appeal must be exercised in a reasonable manner⁴. I am satisfied that the appellants had justifiable motives for exercising that right, acted responsibly at all times and should not be penalised for failings in the way that their case was presented. Given these extenuating circumstances, I conclude that unreasonable behaviour as described in the PPG has not been demonstrated. The application for an award of costs is refused.

Jean Russell

INSPECTOR

⁴ PPG paragraph ref ID: 16-053-20140306