
Costs Decision

Site visit made on 2 September 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 October 2020

Costs application in relation to Appeal Ref: APP/K0235/X/19/3237410 Podington Airfield Farm, Airfield Road, Podington NN29 7JQ

- 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 Simon Whitbread for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the siting of a mobile home for use as a dwelling.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Claims can be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal. In this case the appellant raises both procedural and substantive issues. I consider substantive issues first.

Substantive issues

3. The Council's decision is based on the view that the application lacks detail in 4 respects:
 - i) The nature and extent of the planning unit
 - ii) The relationship between the mobile home and the commercial use of the wider site
 - iii) Evidence of basic amenities enabling permanent occupation
 - iv) Consumption of basic resources such as electricity, gas and internet.
4. From the information before me it is difficult to understand the Council's concerns regarding points i) and ii). While I agree that the mobile home appears to fall within a mixed-use planning unit that is larger than the appeal site, there is no clear explanation in the Council's decision of why it was unable to issue an LCD for what the appellant sought because of this. The particular concerns raised regarding the planning unit are the dimensions of the mobile home and the extent of any ancillary land in residential use. However, the site was clearly identified and it is not clear why the dimensions of the mobile home were needed. It also strikes me as something which could have been easily

verified during the officer's site visit if need be. The concerns relating to ancillary land are not clearly explained in either the decision notice or the officer's report.

5. There is speculation in the Council's report that administrative work in connection with the appellant's business may take place within the mobile home, but the report contains no substantive evidence to back that up. The supporting information submitted by the Council for the appeal is not sufficient to clarify its concerns.
6. Point iii) of the decision notice refers to a lack of evidence of basic amenities in the mobile home, such as washing/bathing and cooking and heating facilities. Even though the appellant uses washing facilities in a separate 'utility block', it is a simple matter of fact that the mobile home has kitchen and bathroom facilities. Of course, the appellant was responsible for providing the information necessary to support his case. However, it is not clear from the Council's report or the decision notice why there was a need for evidence that a mobile home – a unit clearly designed with residential occupation in mind – had basic amenities. No evidence, such as what was seen during the planning officer's site visit, is provided in the Council's report to show any cause for doubt on the matter.
7. The Council now advises that the Council officer who visited the site was informed that the washing and shower facilities were not in use, and I accept that the Council was not obliged to consider an expanded site to include the facilities in the utility block. However, the facilities in the mobile home are ordinary facilities routinely contained in such a unit and there is nothing before me to show that they are incapable of future use. Even if the appellant's comments raised a query regarding the wash basin and shower, that does not explain why the reason for refusal referred to the lack of kitchen facilities. In any event, such concerns were not adequately explained in the reason for refusal or the Council's report.
8. Turning to point iv), it is true that the appellant did not provide details of the consumption of resources such as electricity, gas and internet use. However, that does not, on its own, mean that the residential use of the mobile home was not demonstrated; the overall case set out by the appellant needed to be considered. In fact, the appellant provided a range of other clear, precise and unambiguous evidence in support of his case, including a number of statutory declarations, as detailed in my decision on the appeal. Of course, it can always be said that an applicant could have provided further information. However, the Council has not provided any specific evidence to cast real doubt on the appellant's claim, on the balance of probability.
9. A section in the Council's report entitled, 'Evidence against the application' mainly comprises details of the planning history, which the Council accepts should not have featured there. The only other point is the lack of Council Tax information, although this appears to be a comment on the appellant not providing that information, rather than a suggestion that Council Tax was not paid. In view of that, and given the amount of evidence the appellant provided, I can see no good reason for the appellant's claims to have been doubted. The PPG advises that:

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the

applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability¹.

10. With that guidance in mind, and given the weight of the evidence provided by the appellant, it was necessary for the Council to provide a clear explanation to show why it did not, on the balance of probability, accept the appellant's evidence; it was not sufficient simply to say that more evidence should have been provided.
11. While the Council says that it applied the correct 'balance of probability' approach to the evidence, in accordance with established case law, I find it difficult to see how it arrived at the decision it did, based on the evidence before it. Considering the Council's decision as a whole, I conclude that it was unreasonable, for the reasons I have given. The limited evidence provided in response to the appeal is not sufficient to rescue the Council's position. The PPG advises that a local planning authority may be at risk of an award of costs against it if it fails to produce evidence to substantiate each reason for refusal on appeal.
12. Since I have concluded that the Council's refusal of the LDC was unreasonable and is not adequately supported at appeal, it follows that the appeal was unnecessary. Accordingly, the appellant has incurred unnecessary expense in submitting the appeal and supporting statements, using the services of a professional agent. The Council's unreasonable behaviour led directly to this unnecessary expense and a full award of costs is therefore justified.
13. I have noted the Council's view that its own *Negotiating Submitted Planning Applications Procedure Note* deterred it from engaging with the appellant more fully before determining the application, but that does not alter my view that refusal for the reason given was unreasonable. In any event, even if it applied to LDC cases, the Procedure Note was a self-imposed rule and would not remove the Council's responsibility to engage with the applicant in a reasonable way.

Procedural issues

14. Following the refusal of the application, the appellant's agent wrote to the Council raising a range of matters and seeking agreement on common ground. While the appellant may not have been satisfied with the Council's response to the various matters raised after the application was refused, it did respond and I am not persuaded that it acted unreasonably in that regard. Although I consider that the Council approached the matter of the facilities in the mobile home wrongly, I am not persuaded that it provided untrue information.
15. Overall, I am not persuaded that the Council behaved unreasonably in respect of procedural issues. However, since I have concluded that a full award of costs is justified based on substantive considerations, this does not alter my overall conclusion.

¹ Paragraph: 006 Reference ID: 17c-006-20140306

Conclusion

16. For the reasons set out above I conclude 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

17. 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 Bedford Borough Council shall pay to Mr Simon Whitbread 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.
18. The applicant is now invited to submit to Bedford 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.

Peter Willows

INSPECTOR