
Costs Decision

Hearing Held on 9 March and 21 April 2021

Site visit made on 11 March 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th May 2021

Costs application in relation to Appeal Ref: APP/X3540/C/19/3232027 Land at North Denes Caravan Park, The Ravine, Lowestoft, Suffolk

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by East Suffolk Council for a partial award of costs against Mr Gary Duthie, Tingdene (North Denes) Limited.
 - The hearing was in connection with an appeal against an enforcement notice alleging operational development involving caravan bases, a roadway, a pumping station with settlement tank and pipe works in the course of which waste materials have been excavated from the site and deposited upon the surface.
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Decision

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

The submissions for East Suffolk Council

2. The partial award of costs is sought in respect of the appeals on grounds (c) and (e), which were essentially misconceived and therefore had no reasonable prospect of success.
3. In the appeal on ground (c), the respondent did not produce evidence that the matters stated in the notice (the works) benefit from planning permission. Neither was evidence produced that they are permitted by reason of the requirements of a site licence, as no such licence exists for the appeal site. The respondent's case required consideration of historic planning permissions, which made up the large part of the applicant's work on the appeal.
4. In the appeal on ground (e) it was absurd for the respondent to argue that the applicant's failure to serve a copy of the notice on itself resulted in prejudice to any party. No evidence of such prejudice was produced.

The response by Mr Gary Duthie, Tingdene (North Denes) Limited

5. In view of the actions of the predecessor authority, it was reasonably believed that the works benefitted from planning permission. This belief was initially advanced in respect of a planning permission for a 275-pitch caravan site granted in 1971¹ and later in respect of a permission granted in 1975² for a camping site with roadworks and lighting etc.

¹ N2797/22, granted 3 December 1971

6. The 1971 permission for a caravan site can reasonably be interpreted to provide for ancillary or incidental operational development, indeed such a site could not be achieved without the necessary infrastructure.
7. The 1975 permission is extant, and it was reasonable to argue that the works constitute part of it, being covered by the word 'etc.' in the description of development. Planning decisions should be interpreted having regard to the natural and ordinary meaning of the words used, viewed in their context.
8. It was entirely right to rely upon ground (e) to highlight the applicant's failure to follow the statutory duty to serve copies of the notice correctly. An award of costs in respect of this ground of appeal would not only punish an appellant who rightly highlighted that failure but would also endorse it.

Reasons

9. The Planning Practice Guidance (the PPG) advises that costs may be awarded if a party has behaved unreasonably, and so has directly caused another party to incur unnecessary or wasted expense in the appeal process. An appellant may be at risk of an award of costs if the appeal, or a ground of appeal, has no reasonable prospect of succeeding.
10. While there is no plan showing the red line of the 1971 permission, the red line of a permission granted in 1993³, which amended a condition of the 1971 permission, was drawn around the respondent's existing caravan park. It was therefore agreed that the 1971 permission covered the existing park. However, the respondent argued that the 275 caravans it permitted could not all have been accommodated within the existing park. Consequently, it was contended that the red line must have included additional land and, further, that this could only have been the appeal site, to the north of the existing park, and not the adjacent land to the south or west.
11. The respondent's case that the red line included land additional to the existing park was founded on the 275 pitches being laid out at 50 caravans per hectare, described as an industry accepted and long established approximator. However, no evidence of such a standard, and whether it was in effect in 1971, was produced. Furthermore, no firm evidence was presented to substantiate the assertion that the additional land could only have been the appeal site.
12. Even if it could be demonstrated that the appeal site is within the red line of the 1971 permission, it would still be necessary to demonstrate that the works are permitted by it. The respondent's argument that the permission provided for ancillary or incidental operational development did not address condition 4, which prevents new buildings and structures unless granted prior approval or required by a site licence. No evidence of prior approval having been granted, or of a site licence covering the appeal site was presented.
13. The respondent ceased seeking to rely on the 1971 permission after a drawing showing 275 caravan pitches within the existing park was found. However, the above facts indicate that the case advanced until that point had lacked firm evidence and had largely been conjecture. Accordingly, there was no reasonable prospect of demonstrating, on the balance of probability, that the

² W3234, granted 24 November 1975

³ W3234/10, granted 20 October 1993

works constitute part of the 1971 permission or are otherwise approved or required pursuant to it.

14. The appeal site is within the red line of the 1975 permission and the word 'etc.' in the description of development creates a degree of ambiguity. Accordingly, it was not unreasonable to pursue the argument that it permitted a wider range of operational development than shown on the submitted drawings.
15. The contention that the works benefit from a permission granted in 1984⁴ ceased to have any reasonable prospect of success after it became clear that the permission only enured for the benefit of the local authority. However, the parties had been in communication regarding the 1984 permission before the notice was issued. Accordingly, the applicant could have obviated unnecessary expense by explaining the nature of the deemed permission and the relevant legislative provisions⁵ to the respondent before the appeal was made.
16. The acknowledged failure in service of the notice did not cause the applicant any prejudice and the respondent has not sought to demonstrate that any third party was prejudiced. While the respondent considers the confusion and uncertainty surrounding the failure had a prejudicial effect, the Act allows me to disregard the failure if no party was substantially prejudiced by it.
17. In view of this and the vague nature of the alleged prejudice, which did not affect the respondent's ability to pursue the appeal, there was no reasonable prospect of demonstrating substantial prejudice or succeeding on ground (e).

Conclusion

18. For the reasons set out in paragraphs 10 to 13, 16 and 17 above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

19. 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 Gary Duthie, Tingdene (North Denes) Limited shall pay to East Suffolk Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeal on ground (c) in respect of the 1971 permission and in the appeal on ground (e); such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Mr Gary Duthie, Tingdene (North Denes) Limited, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Mark Harbottle

INSPECTOR

⁴ W3234/7, granted 3 May 1984

⁵ Regulations 4(5) and 4(7) of the Town and Country Planning General Regulations 1976