The Planning Inspectorate

Costs Decision

Inquiry Held on 26 - 29 January and 1 - 3 February 2021
Site visit made on 5 February 2021

by C Sherratt DipURP MRTPI

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

Decision date: 20 August 2021

Costs application in relation to:
Appeal A - Ref: APP/M1005/X/19/3241549 ('LDC Appeal'),

Notice 1 ('Change of Use Notice') - Appeal Refs: APP/M1005/C/19/3226961 (Appeal A1), 3226962 (Appeal B1), 3226963 (Appeal C1), 3226964 (Appeal D1), 3226965 (Appeal E1), 3232250 (Appeal F1), 3232251 (Appeal G1), 3232252 (Appeal H1), 3232253 (Appeal I1); and

Notice 2 ('Operational Development Notice') - Appeal Refs: APP/M1005/C/19/3226967 (Appeal A2), 3226968 (Appeal B2), 3226969 (Appeal C2), 3226970 (Appeal D2), 3226971 (Appeal E2), 3232262 (Appeal F2), 3232263 (Appeal G2), 3232264 (Appeal H2), 3232265 (Appeal I2).

Land at Haytop Country Park Limited, Alderwasley Park, Whatstandwell, DE4 5HP

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Haytop Country Park for a full award of costs against Amber Valley Borough Council.
- The inquiry was in connection with three appeals against the refusal of the Council to issue a certificate of lawful use (Appeal A); Notice 1 against an alleged material change of use and Notice 2 against alleged operational development.

Decision

1. The application for an award of costs is refused.

The submissions for Haytop Country Park and others

2. The submissions were made in writing, so I need not repeat them in full. Instead, I summarise the headline points. In brief, it is submitted that the Council has acted unreasonably in a substantive sense by issuing the enforcement notices and refusing the LDC, causing the appellants to incur the unnecessary expense of the appeal process (PPG ID: 16-030).

3. In respect of Notice 1 (the Use Notice), the ground (d) appeal was bound to succeed as all the available evidence showed that the site had been used for the siting of a substantial number of static caravans for more than 10 years prior to 2016. The Council have been aware of this since 2017 and yet

proceeded anyway. The Council have produced no evidence that a change from single unit to twin unit statics would be a material change of use.

4. The Council's planning witness accepted that planning permission should be granted for static caravans, limited to single units, so the notice was issued against development which in the Council's present view should receive planning permission, albeit subject to a condition. The difference between that position and twin statics is small. Taking a view that single-unit static caravans is acceptable in planning terms is a point that the Council should have taken on board. Not doing so does not resemble the care that should have been taken given severe legal consequences and criminal sanctions of non-compliance with a notice. The relevant guidance expects Councils to carry out prior investigation and pursue matters accurately. The objective of pursuing enforcement action is not to establish the use of a site.

5. Mr Stafford also accepted that on the appellants' assessment of harm, permission for twin units should be granted. Since the Council's technical assessments were undermined by the failure to appreciate the fallback, the unappreciated views of the pre-2016 site and the concessions about planning permissions that should be granted, any harm is at the lower end and it was unreasonable to conclude that permission would not be granted for twin unit statics, if required.

6. In respect of Notice 2 (The Operational Development) the ground (c) appeal would succeed on the bulk of the notice since the 1968 site licence remains in force, as the government guidance on the Mobile Homes Act 2013 and site licences says. The Council's concession in the First Tier Tribunal that the site licence remained (which was given with sight of that guidance) should have been maintained by the Council.

7. In any event, the acknowledged fallback position that a modern, permanent residential site licence would be granted along the lines of the Council's own model conditions meant that most of the development would be capable of being carried out in the future anyway. The acceptance that planning permission should be granted for single unit statics inevitably carried with it an acceptance of significant, necessary infrastructure. The Council simply failed to address what difference, if any, that would make. The elements which would not be covered by a site licence, such as decking or CCTV columns are minor and would obviously not add materially to the impact of the accepted development.

8. It is submitted that the refusal of the LDC was unreasonable given the historic use of the site for the siting of static caravans (which the Council were aware of) and the absence of convincing evidence that any change from touring caravans to static caravans would be a material change of use.

9. In respect of the 1968 site licence the development that has occurred is plotted around that which was there previously. The precise boundary of the recreational space is not too critical. There is no requirement for it to be same size and shape as shown on the 1966 plan.

10. In conclusion none of the appeals should have been necessary.

The response by Amber Valley Borough Council

11. In brief, the Council responded that notwithstanding an acceptance that single-unit static caravans can be stationed on the site, the considerations relevant to this appeal inevitably bring a need for an assessment of what the baseline position should be.

12. The Inquiry remained necessary to resolve matters relating to the development of the site. Informal discussions had failed to do that. The development of the site has included a criminal act and a developer putting the cart before the horse.

13. The Council has not therefore acted unreasonably. The Council did not know what development was taking place. The evidence given by the Council's planning witness was made in light of evidence produced for the Inquiry. The Council's position was not therefore an unreasonable one. There has been a lack of clarity throughout.

14. The Council has demonstrated clearly why the operational development is not lawful.

Reasons

15. 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.

16. This has proved to be a complex case due to the nature of the site, the planning permissions relating to it and the particulars of the alleged breaches. All the main parties involved in the legal grounds of appeal interpreted the relevant historic planning permissions differently – they are poorly worded with little documentation available to assist. The wording of the alleged breach is derived, it would appear, from the definition of a 'mobile dwelling' in the 1952 permission. Although I have reached a different interpretation to that which the Council invited me to find, the Council's position was nevertheless substantiated and not in my view unreasonable. Had I agreed, it would have been necessary for me to go on to consider the materiality of any change as part of my consideration of the both LDC appeal and ground (c) concerning the Use Notice. Again, I consider the Council sufficiently substantiated its case, setting out the changes in the character of the activity that it considered resulted in a material change. This was still the case, even from a baseline starting point that included the stationing of single unit static caravans. A judgement is required as to when a change becomes a material one.

17. I do not agree in respect of Notice 1 (the Use Notice), that if the Council had accepted that single unit static caravans could be stationed on the site earlier, that the ground (d) appeal was bound to succeed. Whilst I note that there was substantial evidence to show that the site had been used for the siting of static caravans for more than 10 years prior to 2016, the evidence on how the static caravans had been occupied and if for permanent residential occupation, how many and for how long, was simply not known to the Council.

18. For ground (d) to succeed it would have been necessary to demonstrate, on the balance of probability, not only that the stationing of static caravans had occurred for a continuous period of 10 years or more, but that at least some were also occupied throughout the period for permanent residential

accommodation, since the notice refers to residential static caravans. It is therefore feasible that ground (d) may not have succeeded. This assessment was also relevant to the other grounds of appeal in order to establish the baseline position.

19. Bearing in mind my own conclusions on Notice 2, I do not consider the Council's case in relation to Notice 1 was one which had no prospect of success even following the concession made at the outset of the inquiry. I recognise that the baseline position adopted by the Council's witnesses did not address the proposition that single unit caravans could potentially be lawfully stationed on the site. However, that position arose largely from the way in which the Council interpreted the planning permissions. For the purposes of ground (a) it could have come as no surprise to the appellants that the harm alleged arose from the stationing of twin-unit caravans since that is what had been brought on to the site and what were present when the notice was issued. 'The caravans' referred to in the reasons for issue were clearly the twin-unit caravans stationed on the land, some of which were occupied, on the date of the issue of the notice and on which the evidence on planning merits was focused.

20. Although concessions were made, I do not consider these would have resulted in no enforcement action being taken or the appeal no longer being necessary. I do not accept that any harm must necessarily be at the lower end of the scale when assessed against a fall-back position of single-unit caravans. The baseline I adopted was different to that of the appellants' witnesses. The Council was able through its witnesses to substantiate its reasons for maintaining that planning permission should not be forthcoming. I do not consider it has behaved unreasonably in this respect.

21. In respect of Notice 2, I have not found in favour of the appellant on any grounds. It follows therefore that it was not clear the appeal made on ground (c) appeal would succeed. Notwithstanding any position adopted by the Council at the First Tier Tribunal, the Council's arguments that the notice is no longer in force were clearly made to this inquiry.

22. The refusal of the LDC was not unreasonable given the Council's interpretation of the planning permissions. The Council was not aware how the historic static caravans were being occupied or for how long. The onus is upon the appellants to demonstrate any lawful use or development.

23. To conclude, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. The application for an award of Costs does not succeed.

C Sherratt

Inspector