

Costs Decision

Hearing Held on 7 December 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 13 January 2022

Costs application in relation to Appeal Ref: APP/D1265/X/21/3267159 Meadow View Caravan Park, Wigbeth, Horton, Wimborne BH21 7JH

- 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 Wessleigh Limited for a full award of costs against Dorset Council.
 - The hearing was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) to confirm that the site has planning permission (by virtue of permission ref. 3/01/1356, granted in April 2002) for a 'mixed use of land as a caravan site and commercial equestrian enterprise' and that both named uses can take place across the entirety of the land outlined in red on Drawing No. 1644-0001-01.
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Decision

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

Reasons

2. 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.
3. The applicant says that the way the respondent went about interpreting planning permission ref 3/01/1356 (the planning permission) was wrong and unreasonable, and that the resulting LDC refusal caused the expense of an appeal that should never have been necessary¹. The respondent disagrees, and says that its interpretation of the planning permission was perfectly reasonable.
4. Planning Practice Guidance makes clear that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing applications by acting contrary to, or not following, well-established case law².
5. Paragraphs 8 to 13 of the Council's statement (repeating what was said in the officer report on the LDC application) seeks to set out the legal principles relating to the interpretation of planning permissions. The Council explains that Lord Carnwath, in the *Trump International* case³, said there are good reasons for a relatively cautious approach in the approach to interpretation including the fact that a planning permission is a public document which may be relied on by parties unrelated to those originally involved.

¹ It is, however, common ground between the main parties that it was lawful and correct to interpret the planning permission to read "and" not "for" in the operational grant.

² Paragraph: 049 Reference ID: 16-049-20140306

³ *Trump International Golf Club Scotland Limited v Scottish Ministers* [2016] 1 WLR 85

6. Notwithstanding this note of caution, the Council most incautiously (and unlawfully, for the reasons given in my Decision) utilised a number of extrinsic materials to come to a view that one use within the mixed-use permission must only occur within a physically distinct and separate part of the site. It is hard to see how such an interpretation can be reconciled with a proper understanding of the well-established planning concept under *Burdle*⁴ of a mixed-use planning unit (as opposed to 2 separate primary uses occurring within their own planning units) and no reasonable reader applying common sense could come to the Council's view based on the permission read together with its conditions and a site plan indicating the extent of the application site through a clear red line pursuant to Regulation 3(1)(b) of the Town and Country Planning (Applications) Regulations 1988 (TCPAR88).
7. The Council says that the site plan was unclear in relation to an annotation, which justified recourse to extrinsic materials, but for reasons given in my Decision I find it wholly unreasonable for the Council to come to that view due to the very limited and unsustainable case made for ambiguity. The planning application was by its very nature a proposal for mixed-use within a site properly demarcated under the requirements of the TCPAR88 and whatever *existing* features are marked on a site plan (in this case derived from an Ordnance Survey (OS) base map) they would clearly not serve to limit the extent of what was *proposed* and what became the permission, particularly one which on its face gave no indication at all of a caravan site use restriction within the operational grant or conditions (the purpose of which is to "identify what cannot be done – what is forbidden", according to Hickinbottom J in *Cotswold Grange Country Park*⁵).
8. Further, to base an interpretation according to what previously existed under an earlier planning permission (1987 permission (3/86/1225)) serves not to recognise that the application was a proposal for further development of the site rather than to regularise an existing use. Even were I to accept that it was necessary and lawful to consult extrinsic material in relation to the alleged ambiguity of the plan, the papers consulted do not support an interpretation that the development simply proposed the straight replacement of a turf cultivation use with a commercial equestrian use within the appeal site together with an unchanged - and geographically restricted - caravan site use.
9. It is not apparent from the papers that the applicant's focus was solely on the change of use in relation to the area where the turf business was conducted. Further, there is no explicit reference in any of the documents to an intent to restrict the caravan site use. Moreover, the application documents reveal that its purpose was to increase the prospects for sale of the site. Adopting a common-sense approach, seeking to restrict the caravan use to a specific area could have had the effect of limiting such prospects. Further, if the retention of the caravan site under the 1987 permission was intended then there would not have been any need to make the application in the terms sought since an application for a change of use to a commercial equestrian enterprise on the remainder of the appeal site alone would have achieved the same result as the Council's interpretation of the 2002 permission. No application for a mixed use would be necessary. Yet the Council accepts that the change of use was indeed to a "genuine mixed use", clearly undermining its own interpretation.

⁴ *Burdle v Secretary of State for the Environment and another* [1972] 3 All ER 240

⁵ *Cotswold Grange Country Park LLP v SSCLG* [2014] EWHC 1138 (Admin)

10. Accordingly, I conclude that the LDC application was unreasonably refused on the basis of an interpretative approach which was inconsistent with relevant legal precedent. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and a full award of costs is justified since an appeal should not have been necessary.

Costs Order

11. 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 Dorset Council shall pay to Wessleigh Limited, 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.
12. The applicant is now invited to submit to Dorset 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.

Andrew Walker

INSPECTOR