



Costs Decision

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 16 March 2022

Costs application in relation to Appeal Ref: APP/P1133/X/21/3288187

- 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 Ross Park Homes Ltd for a full award of costs against Teignbridge District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the existing use of the land for the siting of caravans, without complying with condition 2 of planning permission 93/2752/15/3 and condition 3 of planning permission 96/2562/15/4.
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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 appellant states that the Council has acted contrary to established guidance by
 - i) a failure to consider the ambiguity of the condition and the lack of enforceability of the 'remain' period in the condition;
 - ii) a failure to provide any evidence to counter the appellant's assertion that the condition had been breached (in fact not disputed that there is a breach of condition as written);
 - iii) an attempt to introduce a different interpretation of the condition by substituting 'remain' with 'occupied' in the condition in order to avoid identifying a breach of the condition;
 - iv) an attempt to introduce considerations of the implications of the removal of the condition.
4. The Council states that the LDC application was for a use in breach of two planning conditions and was not made on the grounds of ambiguity/enforceability of the conditions. The Council says that the applicant could have made a separate LDC application to address this. The Council assessed whether the conditions had been breached for 10 years and in doing so acted reasonably in determining the application on the basis it had been made. The burden of proof rests with the applicant and it is not for the Council to search for counter evidence.

5. Notwithstanding the Council's response, the officer's delegated report briefly refers to the enforceability of the conditions albeit that they consider that the enforceability of the conditions themselves is not the subject of the certificate. However, the Council is wrong on this point as an appellant is able to argue that a condition was not legally imposed or fails the legal tests (as an appellant could do in a ground (c) enforcement appeal). In failing to address the substance of the appellant's arguments, I consider that the Council has acted unreasonably
6. In addressing the statutory declaration of Mrs Lowe, the Council interprets the conditions as being primarily about the use of the site rather than for visual amenity reasons and envisaged 'use or occupation' of the touring caravans as opposed to 'storage'. There is no reference to the term 'occupation' of caravans on the site and the conditions cannot be properly interpreted to mean occupation only rather than caravans remaining on the site. Adopting a retrospective interpretation of a condition that implies something different to what was actually drafted at the time is irrational and unreasonable.
7. Although the Council considers that insufficient evidence has been submitted to support the case for immunity from enforcement action, they fail to indicate how or why the evidence falls short of what was necessary to indicate on the balance of probability that an LDC should be issued, with the exception of the static caravan.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

Costs Order

9. 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 Teignbridge District Council shall pay to Ross Park Homes Ltd 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.
10. The applicant is now invited to submit to Teignbridge District 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 Jarratt

Inspector