

Costs Decision

Hearing Held on 28 June 2022

Site visit made on 24 May 2022

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2022

Costs application in relation to Appeal Ref: APP/Z2505/X/21/3280081 Old Leake Caravan Park, Shaw Lane, Old Leake, Boston PE22 9LQ

- 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 Michael and Anthony White for a full award of costs against Boston Borough Council.
 - The hearing was in connection with an appeal against the refusal of an application for a certificate of lawful use or development for in respect of the proposed use of land within the existing caravan site for the siting of static caravans to be occupied as 'worker accommodation' without restriction on the time when such occupation has to cease up to a maximum of 25 caravan units on the site at any time within the area defined by the extant permission.
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Decision

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

The submissions for Michael and Anthony White

2. The respective cases were submitted in writing and added to at the Hearing. As the details are familiar to those involved the following is a brief summary of the main points of the claim.
3. The application is made on the basis that the Council refused the application without proper justification and that the Council has not responded properly to the matters raised within the applicants' appeal statement, particularly with regard to relevant caselaw. It is considered that the Council did not properly appraise the case in the first instance, including relevant caselaw.
4. The Council appear to accept the view that conditions cannot be implied but has based its case on the suggestion that the previous Inspector implied a three year temporary consent which is capable of being enforced. Such a view runs counter to all relevant caselaw and is perverse.
5. The Planning Practice Guidance (PPG) sets out examples of behaviour that can lead to a substantive award, including a reliance on vague or generalised reasons, not supported by objective analysis and acting contrary to or not following established caselaw. The reason for refusal is based on a fundamental misunderstanding of the previous appeal decision and relevant caselaw. A more comprehensive assessment of what was approved and lawful was necessary and it must be apparent to the Council that it is seeking to defend an indefensible position.

6. The Council offered no evidence of its own and nothing to contradict the position that conditions cannot be implied in a decision. It effectively ignored established caselaw. The Council did refer to the case of *Trump*¹ but no analysis of that case was provided to indicate how it alters the relevant position established in caselaw. When read properly, none of the conditions impose a temporary timeframe.
7. Had the Council assessed the matter properly it seems unlikely that it would have pursued a reason for refusal and the expense of submitting the appeal was entirely unnecessary.

The response by Boston Borough Council

8. The Council does not share the applicant's view and the officer report and appeal statement outline the background to the case and highlight relevant cases. Whilst it is correct that the description of development limits what is permitted and conditions are required to restrict and enforce limitations on that use caselaw has been presented to confirm that decision notices need to be read in their entirety and other documents can be read into them to aid interpretation.
9. In relation to the *I'm Your Man*² and *Cotswold Grange*³ cases no conditions at all were imposed restricting the permitted use. In this case there is a condition that can be tracked back to a description of development on a planning permission which references a temporary three-year use. The Council maintains that the condition is enforceable and therefore, the proposed development would be unlawful.
10. The Council has acted in a reasonable and timely manner when determining the application. Advice was sought from the Council's legal department prior to making the decision. It is respectfully requested that the application for an award is dismissed.

Reasons

11. Paragraph 030 of the PPG identifies that an award of costs may be made where a party has behaved unreasonably *and* that behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. Both aspects need to apply for an award to be made. Paragraph 049 provides a non-exhaustive list of the type of behaviour that may give rise to a substantive award against a local planning authority, including a failure to produce evidence to substantiate a refusal; reliance on vague or generalised assertions and acting contrary to well-established caselaw.
12. To a large extent, my decision in the associated appeal hinged around the interpretation of the previous planning permission that had been granted in relation to the site, having regard to relevant caselaw. Given the planning history of the site that wasn't an altogether straightforward matter. The fact that I felt the need to change the procedure from the written method to a Hearing is indicative that I needed to probe some of the issues in more detail to ascertain precisely what was permitted and to consider the exact meaning of condition 7, attached to the 2019 appeal decision.

¹ *Trump International Golf Club Scotland Limited and another v The Scottish Ministers (Scotland)* [2015] UKSC74

² *I'm Your Man Limited v Secretary of State for the Environment* (1999) 77 P. & C.R. 251

³ *Cotswold Grange Country Park LLP v SSCLG & Tewksbury Borough Council* [2014] EWHC 1138 (Admin)

13. As set out in my associated decision, the 'development' permitted was that described in the original planning permission in 1986. The way in which subsequent applications made under s73 of the Town and Country Planning Act 1990 (the Act) were described made interpretation more difficult. Neither the planning permission granted in 2015 or the permission granted on appeal in 2019 actually specify an act of development within the wording of the formal decision.
14. The 2015 permission simply stated 'application to remove condition 3 of B16/0606/86'. The 2019 appeal decision was more convoluted stating that planning permission was granted 'to remove condition 3 of B16/0606/86....without compliance with condition 2 previously imposed on planning permission Ref B/15/0017.....'. That description appeared to conflate the 2015 permission with the 1986 permission when, in fact, they are two separate planning permissions. Thus, the starting point was that some interpretation was necessary to work out what was permitted by each permission.
15. Moreover, the question of whether condition 7 of the 2019 appeal decision did, in fact, impose a time limited restriction on occupation by agricultural workers also required consideration of substantial amounts of caselaw. Whilst the *I'm Your Man* line of judgements referred to by the appellant remain good law I was also directed to a range of more recent judgements which provide a nuanced position in terms of the approach to the interpretations of conditions and permissions granted under s73 of the Town and Country Planning Act 1990, as set out in more detail in my associated decision.
16. The Council had referred to the case of *Trump*⁴ in its statement and that was relevant to my decision. It is the case that the original statement did not expand in great detail as to how the judgement influenced the decision and meat on the bones was only added substantially at the Hearing. Nonetheless, the essential point that it was appropriate to examine extraneous material when trying to ascertain the meaning of condition 7 was clearly made.
17. The existence of condition 7 did differentiate the case from those of *I'm Your Man* and *Cotswold Grange*, where no relevant limiting conditions were imposed. Thus, the matter wasn't as straightforward as suggested by the applicants and required detailed consideration of the facts of the case and relevant caselaw. Overall, the Council did not rely on vague or generalised assertions nor did it ignore well-established caselaw. Whilst, ultimately, I did not agree with the Council's position that is not indicative of any unreasonable behaviour but was reflective of the finely balanced nature of the decision in what was quite a complex case involving a nuanced area of caselaw.
18. In the absence of any unreasonable behaviour it follows that there are no grounds for an award of costs, having regard to the terms of the PPG. Accordingly, I shall refuse the application.

Chris Preston

INSPECTOR

⁴ *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74