



Costs Decision

Site visit made on 31 August 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Costs application in relation to Appeal Ref: APP/Z5630/X/21/3277752 3A Coombe Lane West, Kingston-upon-Thames KT2 7EW

- 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 Mr and Mrs B Barikor for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
 - The appeal was against the refusal of a certificate of lawful use or development for: Proposed siting of a caravan for purposes incidental to the enjoyment of the dwellinghouse.
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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 (PPG) 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. Unreasonable behaviour may be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal. In this case the application is made on substantive grounds.
4. The applicant has referred to paragraph 38 of the National Planning Policy Framework (the Framework) and states that the Council has not been proactive and that there has been no opportunity for meaningful engagement with the Council at all. But based on the information provided, the Council offers a pre-application advice service and section 10 of the application form indicates that the applicant did not avail themselves of this.
5. The applicant states that at no point did the Council request additional information in order to demonstrate that the siting of the proposed caravan would not constitute building operations or other operations as defined within section 55(1) of the 1990 Act. But as is set out in the PPG, the applicant is responsible for providing sufficient information to support an application¹ and in this regard a Council is under no obligation to request additional information.
6. However, the applicant states that the Council's decision appears to be predicated primarily upon a judgement that has no relevance to the siting of a caravan, ie the *Woolley*² case.

¹ Lawful development certificates - paragraph:006 Reference ID: 17c-006-20140306

² *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin)

7. In its assessment, the Council also drew on an appeal decision at 14 Almshouse Lane in Chessington³, which it said was for a "similar proposal". But, as the applicant has pointed out, the Inspector in that case stated that the *Woolley* case had no bearing on his decision, given the very different nature of the structures being considered. So, as is set out in my appeal decision, the *Woolley* case has limited (if any) relevance to a caravan and in my view, the Council misdirected itself in relying on this case law to substantiate its decision.
8. The Council says that a "comprehensive assessment" of the application is contained within the officer's report. But there is no mention in the report of the Caravan Sites and Control of Development Act 1960 or the Caravan Sites Act 1968. So I am not satisfied that the Council properly engaged with the statutory definition of a caravan and whether the proposal complied with this or not.
9. In light of the case put forward by the appellant for the appeal and consistent with the PPG⁴, the Council should have reviewed its case promptly following the lodging of the appeal, as part of sensible on-going case management. But there is no evidence this occurred, despite the appellant inviting the Council to reconsider its position via the appeal and noting that no statement for the appeal was provided by the Council to counter any of the evidence submitted by the appellant.
10. The appellant has indicated that the appeal would have been withdrawn if the Council had confirmed its support for a resubmission, on the basis of the evidence submitted with the appeal. The implication of this is that the appeal was avoidable and nothing has been provided by the Council to satisfy me this was not the case.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 the Council of the Royal Borough of Kingston-upon-Thames shall pay to Mr and Mrs B Barikor, 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.
13. The applicant is now invited to submit to the Council of the Royal Borough of Kingston-upon-Thames, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Perkins

INSPECTOR

³ Reference APP/Z5630/X/20/3254407 dated 1 March 2021

⁴ Appeals – paragraph: 049 Reference ID: 16-049-20140306