

Costs Decision

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

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

**Costs application in relation to Appeal Ref: APP/L5240/X/22/3295099
Roberts Farm, Old Lodge Lane, Kenley CR8 5EU**

- 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 L Cardy for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) sought for a proposed twin-unit mobile home to replace existing static caravan.
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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. The PPG makes clear¹ 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 or by unreasonably defending appeals. A given example of such behaviour is not determining similar cases in a consistent manner.
4. The applicant has submitted the details of 4 LDC applications² that had been granted by the Council on 1 April 2020, 17 April 2020, 9 September 2020 and 9 February 2021 respectively (with the LDC application in the appeal before me being made on 7 April 2020 and refused on 3 August 2020). All these decisions necessarily considered a similar core issue as in the appeal – whether the structure being proposed in each case was legally a caravan and not a building – but were concluded upon positively without the same opposing arguments made against the appeal scheme which caused the Council to refuse it and to defend the appeal.
5. For instance, in 2 of the granted applications it was explicit that the 2 halves of the twin-unit would be separately constructed on site before a final act of joining. Yet the Council did not find that this excluded the structures from being legally caravans through failing the ‘construction’ test, as purported in the appeal case with an argument (not accepted in my Decision) based on an interpretation of a piece of case law³ from 2014. Nor was it argued the test was failed due to a foundational or support arrangement constituting a 3rd section.

¹ Paragraph: 049 Reference ID: 16-049-20140306

² 20/00374/LP, 20/00830/LP, 20/03073/LP, 20/05914/LP.

³ *Lloyd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 839

6. Arguments made in the appeal case relating to the permanency of the structure associated with the foundational system were not made out in the granted cases, even though it is arguable in some cases that the various foundations and support systems have a greater potential (or at least the same potential) to permanently alter the physical characteristics of the land (subsurface padstones, for instance).
7. One granted application was accompanied with photographs showing a roof void, with the caravan external height apparently over 3.05m, yet the Council did not raise an argument (as in the appeal case) that the 'size' test was failed because the structure contained living accommodation in the roof void which would be at a height over 3.05m. Further, based on the facts of the appeal, that argument was very limited indeed.
8. The alleged failure of the appeal caravan to meet the 'mobility' test - notwithstanding strong and clear evidence from a chartered surveyor and crane lifting company to the contrary - was also a matter which does not appear to have received a similar approach in the granted cases. For instance, those applications were not found wanting on the (flawed) basis that "it is in theory possible to move the mobile home, but it is clear that this is an impractical and cumbersome process involving a great deal of heavy machinery"⁴. The test is whether, when assembled, the structure is physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)⁵. The equipment used is not relevant.
9. These inconsistencies in determining similar cases, which have not been satisfactorily explained, represents unreasonable behaviour by the Council. It is not sufficient for the Council to point to another application made by Mr Cardy in 2018 which had also been refused⁶, and which (unlike the LDC application in the appeal before me) was determined some time before the period when there were inconsistent decisions.
10. 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 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 the Council of the London Borough of Croydon shall pay to Mr L Cardy, 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 the Council of the London Borough of Croydon, 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

⁴ Officer Report; 5.46

⁵ Section 13(1)(b) of the Caravan Sites Act 1968

⁶ 18/01423/LP.