
Costs Decisions

Hearing Held on 31 January 2023

Site visit made on 1 February 2023

by Malcolm Rivett BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Costs Application A: in relation to Appeal Ref: APP/J2210/W/22/3308172 Alberta Caravan Park, Faversham Road, Seasalter, CT5 4BJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Park Holidays UK Limited for a full award of costs against Canterbury City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for use of land to accommodate 91 static holiday caravans.
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Costs Application B: in relation to Appeal Ref: APP/J2210/W/22/3308172 Alberta Caravan Park, Faversham Road, Seasalter, CT5 4BJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Canterbury City Council for a full award of costs against Park Holidays UK Limited.
 - The hearing was in connection with an appeal against the refusal of planning permission for use of land to accommodate 91 static holiday caravans.
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Decisions

1. I allow Costs Application A, as set out in the Costs Order below.
2. I refuse Costs Application B.

Reasons

3. *Planning Practice Guidance* advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.

Costs Application A (by Park Holidays UK Limited against Canterbury City Council)

4. The Council refused the planning application on four grounds relating to the proposal's effect on (i) the Swale SPA, SSSI and RAMSAR site, (ii) the character of the North Kent Marshes Area of High Landscape Value, (iii) flood risk and (iv) highway safety. The appeal was "started" on 1 November 2022 with a deadline of 6 December 2022 set for the submission of Statements of Case.
5. The Council's Statement of Case was received by the Inspectorate on 6 December 2022 in which the Council stated that, following legal advice and

further consideration, it was no longer pursuing the reasons for refusal relating to the Swale SPA, SSSI and RAMSAR Site, the character of the North Kent Marshes Area of High Landscape Value and highway safety. These reasons for refusal did not relate to the absence of information which the applicant had subsequently provided and they are not issues I have considered would justify refusal of permission for the scheme. Consequently, I conclude that the Council acted unreasonably in refusing permission for the proposal on these three grounds. Therefore, Park Holidays' costs in pursuing the appeal up until it received the Council's Statement of Case were unnecessarily incurred.

6. Whilst I understand that the Council advised Park Holidays of its intention to withdraw three of the reasons for refusal a few days prior to submission of its Statement of Case, it would have been entirely reasonable for Park Holidays to have not acted on this until receipt of formal notification of this in the Council's Statement of Case. Moreover, although the Council questions what evidence Park Holidays had prepared before being notified of the withdrawal of three of the reasons for refusal, Park Holidays had in fact prepared and submitted to the Planning Inspectorate a Statement of Case and Proofs of Evidence in connection with all the reasons for refusal.
7. The Council's Statement of Case indicated that it still maintained its objection to the scheme in terms of flood risk. In summary it explained that the Council considered that the proposal fails (i) the sequential test because the scheme would not be an extension to the existing Alberta Caravan Park and (ii) the exception test, with reference a letter from the Environment Agency, which postdates the refusal of planning permission for the scheme.
8. The relevant reason for refusal on the Council's decision notice does not explain the Council's specific concern with respect to the sequential test as later set out in its Statement of Case - that being its contention that the appeal scheme would not be an extension of the existing Alberta Caravan Park. Moreover, whilst Council Members are not bound to accept the advice of their officers, the written transcript of the relevant committee meeting indicates that there was no substantive discussion of the proposal's failure of the sequential test on the basis of it not constituting an extension to the existing caravan park. Indeed, the view that the scheme would not constitute an extension was mentioned briefly only once by an individual Councillor and not in relation to the concerns he expressed about flood risk. Furthermore, in terms of the exception test there was no reference to the later relied-on letter from the Environment Agency. This, of course would have been impossible, because the letter was not written until a number of months after the Council had refused permission for the scheme.
9. Whilst there was clearly extensive discussion about flooding at the committee meeting, the transcript shows that this was very much in general terms about flooding in the Seasalter area and it did not grapple with the technical evidence which had been put forward specifically about the proposed scheme and the likelihood of it flooding. Such evidence is crucial to determining whether or not the sequential and exception tests are met.
10. As detailed in my decision on the appeal I have concluded that the proposal would constitute an extension to the existing Alberta Caravan Park. Furthermore I consider the evidence put forward by the Council at appeal in support of its view to the contrary is unconvincing: fundamentally its

Statement of Case argues that the submitted evidence does not demonstrate that there is not a sequentially preferable site for a freestanding caravan park, rather than credibly demonstrating why the appeal proposal should not be considered to be an extension of the existing Alberta Caravan Park. At the hearing itself the Council justified its case that the appeal proposal would not be an extension on the basis that the two sites are not immediately adjacent or intervisible and are separated by a railway line. However, notwithstanding these points, it could not credibly counter the crucial facts (i) that the sites are only a couple of minutes' walk apart; (ii) that some caravans on the appeal site would be as close to the Alberta Park swimming pool and indoor leisure facilities as some caravans on the existing site; (iii) that the outdoor recreation area aside, the appeal scheme proposes no communal facilities on its own site; and (iv) that a condition of planning permission could ensure in perpetuity that the development could only operate as an extension of the existing caravan park.

11. As also detailed in my decision on the appeal I have concluded that the proposal would pass the exception test. The basis for the Council's argument that this test is failed by the scheme is the letter of 18 November 2022 from the Environment Agency in which it is stated *"It should be noted, however, that our requested condition will not ensure the units will be 'safe' in the event of a failure of the defences (residual risk) or if the park was to become undefended in the future"*.
12. However, in my view it was unreasonable of the Council to rely on this sentence of the letter in isolation of the remainder of the relevant paragraph which states that *"The safety of occupants will therefore be reliant on adequate flood warning and evacuation procedures."* (a matter which can be addressed by a condition which has been proposed by the Council) and the Environment Agency's comment in its subsequent email exchange with the Council that *"To confirm, we have not changed our position with respect to the sites. We have no policy grounds on which to object to the principle of holiday accommodation here."*
13. Consequently, I conclude that the Council acted unreasonably in refusing permission for the scheme in relation to flood risk and that Park Holidays' costs in addressing this matter at appeal were therefore unnecessarily incurred. An award of costs to Park Holidays is therefore justified in relation to (i) all expenditure it incurred during the appeal on the issue of flood risk and (ii) all expenditure incurred during the appeal in relation to the other reasons for refusal up to the point at which Park Holidays received the Council's Statement of Case.

Costs Application B (by Canterbury City Council against Park Holidays UK Limited)

14. The Council seeks a full award of costs on the basis that Park Holidays unreasonably pursued an appeal for a proposal which is clearly not in accordance with the development plan and which had little chance of succeeding. However, if this were to be so, it logically must mean that the Council's officer advice to the relevant Committee that the scheme accorded with the development plan and should be granted permission was also unreasonable.
15. In any case, as set out in my appeal decision, I have determined that the scheme accords with the development plan and I have granted planning

permission for it. On this basis I conclude that Park Holidays did not act unreasonably in pursuing the appeal and that, consequently, the Council's costs in respect of it were not unnecessarily incurred. This application for costs should therefore be refused.

Costs Order

16. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Canterbury City Council shall pay to Park Holidays UK Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred (i) in respect of the flood risk reason for refusal throughout the appeal proceedings and (ii) in respect of the other reasons for refusal up until Park Holidays UK Limited received the Council's Statement of Case. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Canterbury City 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.

Malcolm Rivett

INSPECTOR