



Costs Decision

Site visit made on 3 January 2023

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 14th March 2023

Costs application in relation to Appeal Ref: APP/H0928/W/22/3297896 Horse and Wagon Country Park, Lane from Nentsbury Hall to Haggs House, Nentsbury, Cumbria CA9 3LH

- 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 Mr G Miller for a full award of costs against Eden District Council.
 - The appeal was against the refusal of planning permission for proposed improvements to caravan park without complying with conditions attached to planning permission Ref 08/0180, dated 15 May 2008.
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. Applications for costs should clearly demonstrate how alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The application is made principally on the grounds that the Council behaved unreasonably with respect to the substance of the matter under appeal, including in relation to its refusal to grant permission and its continuing defence of what the applicant considers to be an untenable position.
4. The applicant considers that the Council misunderstood and misrepresented the relevance and interpretation of local plan policies. From the appeal evidence, the particular concern appears to centre on the assessment of the proposal against policy EC4 of the Eden Local Plan 2014-2032. As can be seen from my appeal decision, I found that policy EC4 is a relevant policy, but even if it was not the proposal would still conflict with other policies in the development plan.
5. The reasons for the refusal of the application in relation to disputed condition No 3, which restricts the occupancy period, are substantiated in the Council's officer report and its evidence to the appeal, with reference to development plan policy and material considerations including previous planning decisions, third party representations and the earlier dismissed appeal.

6. Tourism sites elsewhere have been permitted to open year round. However, the schemes referred to differ from the appeal site including in terms of their characteristics, location and surrounding context. Taking into account the particular circumstances of the appeal site, which the appellant in the appeal acknowledges to be somewhat unusual, the Council's decision in relation to the period of occupancy, and based upon the individual merits of the case, does not demonstrate inconsistency in its decision making.
7. No substantive evidence has been provided to demonstrate that the Council acted contrary to well-established case law, which relates to decisions of a court and not to Council planning decisions or appeal decisions.
8. As can be seen from my appeal decision, my conclusion in respect of the proposed variation of condition No 3 aligns with the Council's assessment of the impact of an extended period of occupancy. Therefore, I am satisfied that the Council did not behave unreasonably in refusing the application on grounds relating to the impact of the proposed variation of condition No 3.
9. Condition Nos 5 and 7, which secure holiday letting and prevent second home use of caravans, do differ from conditions imposed on tourism sites elsewhere to secure holiday use of caravans and to prevent occupation as permanent or sole residences. The Council has not explained the different approach taken. However, in its evidence to the appeal, the Council accepts that condition Nos 5 and 7 are not strictly necessary, provided that other conditions secure the holiday use and prevent permanent residential occupation. Taking into account the evidence that was before the Council, including the definition of second homes, other relevant conditions imposed on the permission and other planning permissions and appeal decisions, it does seem unreasonable for the application to have been refused on grounds that removing the restriction on second homes could make it difficult to enforce that the site was not used as a person's primary place of residence.
10. As can be seen from my appeal decision, I also found that the disputed caravan occupancy conditions are not necessary or reasonable to secure the holiday use of the appeal site and to prevent permanent residential occupation. Accordingly, I removed condition Nos 5 and 7 and replaced them with a single condition that secures the holiday use and that better aligns with conditions imposed elsewhere. Other conditions on the permission function to prevent permanent residential occupation of the caravans.
11. Nevertheless, as I found that the proposed occupancy period would result in harm and conflict with the development plan, I allowed the appeal only insofar as it related to condition Nos 5 and 7 and dismissed it insofar as it related to condition No 3. Consequently, and as the Council did not behave unreasonably in relation to condition No 3, it follows that the appeal could not have been avoided. Planning permission was not unreasonably withheld for a development that should clearly have been permitted. However, the Council did behave unreasonably by refusing the application on grounds relating to condition 7. While the matter of potential residential abuse receives little coverage in the evidence with the appeal, the applicant will have incurred unnecessary and wasted expense because time and effort was expended on a part of the case that should not have had to be pursued.
12. Consequently, I find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense as described in the PPG, has been

demonstrated. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's second reason for refusal, is justified.

Costs Order

13. 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 other enabling powers in that behalf, IT IS HEREBY ORDERED that Eden District Council shall pay to Mr G Miller the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal which relates to disputed condition No 7 and the removal of the second home restriction.
14. Mr G Miller is now invited to submit to Eden District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Sarah Manchester

INSPECTOR