



Costs Decision

Site visit made on 15 March 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4TH APRIL 2023

Costs application in relation to Appeal Ref: APP/B0230/X/22/3298214 34 Hayton Close, Luton LU3 4HD

- 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 Tracey and Warren Lee for a full award of costs against Luton Borough Council.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the proposed siting of a caravan for ancillary residential use.
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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) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably so as to cause another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). "Unreasonable" has its ordinary meaning, as established by the Courts¹. Paragraph 031 of the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. The applicants sought an award of their costs on substantive grounds. Summarised, the applicants' reasons for doing so are that the details of relevant case law and appeal decisions they supplied were not considered by the Council and that consequently, erroneous conclusions regarding the proposal were reached which could not be substantiated.
4. The Council's response in summary is that the officer report clearly refers to the supporting information submitted and that the relevant legislation and case law was taken into account. When assessed against that background and looked at as a whole, the Council concluded that the proposal would involve development. The Council has been transparent in its approach, which is also consistent with previous similar applications.
5. At paragraph 049, the PPG advises that a Council risks an award of costs on substantive grounds where an application is unreasonably refused or an appeal is unreasonably defended. A list of examples of unreasonable behaviour that might apply to a Council in respect of the substance of an appeal are provided at the end of the paragraph. These include preventing or delaying development

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failing to produce evidence to substantiate reasons for refusal at appeal; making vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; acting contrary to or not following well-established case law, and; not reviewing the case promptly following the lodging of an appeal as part of sensible on-going case management.

6. To my mind, the Council's actions in this appeal exhibit clear similarities with the examples of unreasonable behaviour set out above. There is little in the officer report which might show that the Council fully considered the applicants' evidence and gave it appropriate weight accordingly. There is a limited analysis of the proposal having regard to the totality of the applicants' evidence. Little attempt has been made to distinguish between the facts and circumstances of the proposal and those in the appeal decisions supplied, for instance. A reference in the officer report does not amount to a detailed and considered assessment of the entirety of the applicants' evidence, nor does it show that the applicants' submissions were given appropriate weight.
7. The judicial authorities relied on by the applicants make it clear that a structure falling within the statutory definition of a caravan cannot also be a building. However, the Council sought to ascribe qualities of permanence to a structure that on its own admission, would otherwise be inherently mobile. In doing so, the Council seem to have conflated the two limbs of development-building operations and the making of any material change in the use of any buildings or other land-set out in the definition at s55(1) of the 1990 Act. The basis for this approach was not clearly explained. The Council did not refer to any relevant judicial authority or appeal decisions that might have supported the holding of such an interpretation. The reasoning in the officer report leaves the distinct impression that the legislation and relevant authorities were either not fully understood or they have been misapplied.
8. Therefore, the reason for refusing the application does not have any great evidential foundation, it does not bear detailed, objective scrutiny and the Council has been unable to substantiate its case at appeal. In my view, had a more detailed and considered analysis been carried out, with a fuller assessment undertaken having regard to the applicants' evidence including the relevant authorities and appeal decisions, it is entirely possible that the application would not have been refused. This has led to the applicants experiencing an avoidable delay in their ability to undertake the proposal.
9. For the above reasons, the applicants have clearly been put to the unnecessary expense of pursuing an appeal which, had the Council behaved reasonably with regard to the substance of the case, could in all likelihood have been avoided. Furthermore, there is no indication that when faced with the prospect of defending an appeal the Council had actively sought to review its case. By the Council defending its position at appeal the applicants felt that they had to make further submissions during the appeal process, thus involving their incurring additional wasted expenditure as well as more delay.

Conclusion

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.

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 Luton Borough Council shall pay to Mr and Mrs Tracey and Warren Lee, 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 applicants are now invited to submit to Luton Borough 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.

Stephen Hawkins

INSPECTOR