

Costs Decision

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Costs application in relation to Appeal Ref: APP/M2840/X/22/3299164 Berry Green Park, Clopton, Northamptonshire, NN14 3LN

- 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 Brandon Jarvis for a full award of costs against North Northamptonshire Council.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the use of the site for the stationing of 26 caravans for permanent residential use, including an additional unit on the southern part of the site.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Government's 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. In my decision on the appeal I reached the conclusion that the 2006 Permission remains relevant, and limits (by condition) the number of caravans permitted on the southern part of the site to no more than 12. But it is important to be clear that this finding flows from my earlier conclusion that – contrary to the views of both the Appellant and the Council – the 1989 Permission was for the repositioning of eight caravans, and should not be interpreted as allowing the use of the Appeal Site by an unrestricted number of caravans.
4. The Council's stated position, at application and appeal stage, was that the 1989 Permission allowed the use of the Appeal Site by an unrestricted number of caravans. This was common ground with the Appellant, and indeed informed the Council's decision to issue the 2020 LDC for 25 caravans. It was on that basis that the Appellant sought to argue that by reference to the principle established in the *Newbury*¹ judgment, the 2006 Permission was not necessary and its conditions could be disregarded. That is a perfectly rational argument, and it was set out with admirable concision and clarity by the Appellant's agent at application stage and again, with additional detail and helpful supporting material, at appeal stage.
5. It is rather difficult to tell, from the limited material submitted, whether or not the Council fully understood and engaged with that argument. At paragraph 7.1.10 of its Delegated Officer Report on the application, the Council appears to take the view that the *Newbury* case does not support the suggestion that a

¹ *Newbury District Council v Secretary of State for the Environment* [1981] AC 578

permission could be ignored if unnecessary, as the judgment was about “material considerations; and whether conditions fairly or reasonably relate to the development permitted.” I share the Appellant’s concern that this might indicate a misunderstanding, or misidentification, of the relevance of the *Newbury* judgment to this particular case.

6. However the delegated report then goes on, at paragraph 7.1.12, to set out the view that the implementation of the 2006 Permission constituted a “new chapter” in the planning history of the site. The reasoning is sparse, but this does at least indicate that the Council was addressing the relevant principle from *Newbury*; that is, that where the implementation of the later permission leads to the creation of a new planning unit, the existing use rights attaching to the former planning unit are extinguished. There would have been no reason for the Council to consider such matters, had it been proceeding solely on the misguided basis that the *Newbury* judgment was relevant only to “material considerations” and the fairness or reasonableness of conditions.
7. On balance, while I find the Council’s brief consideration of the *Newbury* principle somewhat muddled and regrettably lacking in clarity, I would not go so far as to categorise it as unreasonable. In my appeal decision I conclude that the 1989 Permission does not allow an unrestricted number of caravans to be stationed on the Appeal Site, but even if I had agreed with the parties that it did, it would not necessarily have followed that the 2006 Permission should have been disregarded and the LDC issued. I would have needed to consider whether the 2006 Permission had been “unnecessary” in the light of the previous permissions, and whether or not it had the consequence of removing such existing use rights as may have derived from them. That consideration would have turned in large part upon whether or not the 2006 Permission amounted to the creation of a new planning unit, or a new chapter in the planning history of the Appeal Site. While it is not expressed as such in terms, this is something that the Council does appear to have grappled with in its delegated report.
8. In summary, I conclude that the Council did not behave unreasonably in maintaining its position that the 2006 Permission, and the condition imposed upon it to limit the number of caravans, remained relevant and applicable. Its rationale for doing so was somewhat muddled and lacking in coherence, but in my judgment was not so impenetrable or wrong-headed as to be fairly characterised as unreasonable.
9. I therefore conclude that an award of costs is not justified.

Jessica Graham

INSPECTOR