
Costs Decision

Site visit made on 28 February 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Costs application in relation to Appeal Ref: APP/V0510/X/21/3287806 Land at Twentypence Marina, Twentypence Road, Wilburton CB6 3PX

- 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 Jason Barr of Barr's Residential & Leisure Ltd for a full award of costs against East Cambridgeshire District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the use of land as a caravan site.
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Decision

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

The submissions

2. The applicant has summarised his reasons for the costs application as follows:
 - 1) Council's failure to properly maintain its planning register and provide the appellant and his agents with planning records pertaining to the site when requested on five separate occasions over more than 2 years; and
 - 2) the Council materially changing its case during the appeal process after it had discovered that permission did in fact exist for a caravan site so that it could continue to maintain its reason for refusing to grant the Certificate of Lawful Use that had been applied for.
3. I have had regard to the Council's response in reaching my decision.

Guidance

4. Paragraph 030 of the Planning Practice Guidance on Appeals (the PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. Paragraphs 047 and 049 of the PPG provides examples of unreasonable behaviour on the part of the local planning authority. Some that might be relevant to this costs application include:
 - lack of co-operation with the other party or parties;
 - delay in providing information or other failure to adhere to deadlines;
 - introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and

- prolonging the proceedings by introducing a new reason for refusal.
6. Although some of these examples relate more to the determination of appeals made under section 78 of The Town and Country Planning Act 1990 as amended, the principles of these can be applied to this case.

Reasons

7. Whilst the vast majority of the planning documents were available to the applicant prior to the determination of the lawful development certificate (LDC) application subject of this appeal, I can see that the release of the records held by the Council has been problematic. Two decisions were provided to the applicant after the appeal had been submitted, and after the deadline for the submission of evidence in this case. This has resulted in the need for the applicant to prepare a late submission to the appeal, providing the details available of the permissions granted, one of which has been crucial to the determination of the appeal.
8. I note that the two decisions were both made prior to 1974. The Council say that the pre 1974 decisions were made by the former Cambridgeshire and Isle of Ely County Council (CIECC), which the Council say was abolished in 1974. The Council also say that Cambridgeshire County Council (CCC) was its successor, not East Cambridgeshire District Council (ECDC), giving this the reason why the applications were not on the register of ECDC.
9. Both parties have referred to the legislation in force at the time these applications were made. Importantly, this requires a local planning authority, not a council, to keep a register containing information with respect to applications for permission made to that authority. Whilst I note the Council's suggestion with regard to the successor of CIECC, the applicant points to the district planning functions that were carried out by ECDC from its formation. This would indicate that the local planning authority continued in part within ECDC, and that the requirement to keep a register passed to the ECDC.
10. Regardless of whether or not the Council failed to comply with the legislation and its duty to maintain a planning register, it has not explained where the pre 1974 records had been kept, such that it might explain the delay in their provision. Neither has it given any other reason for their late production.
11. Whilst I acknowledge that the onus is on the applicant, his case is reliant on the planning history for the site. This has necessitated the requests for the documents of the relevant planning history from the Council. The applicant clearly requested any planning records from the 1950's onwards. If it is the case that the pre 1974 documents are held with CCC, I cannot see that the Council has referred the applicant to CCC for the records that pre-date the formation of the ECDC.
12. Having reviewed the LDC application after its submission, the Council would have been alive to the likelihood of there being other planning records, including a planning permission for 24 touring caravans to be positioned on the site, as referred to in the previous appeal decision (reference APP/5138/A/80/13540). Despite this, it took a further request from the applicant for the relevant documents to be found, and this after the deadline for the submission of all evidence during the appeal. I can only consider this to be unreasonable behaviour on the part of the Council.

13. I have indicated above that my determination of the appeal has turned on the documents relevant to the pre 1974 permissions, in particular those relevant to planning application reference ER/72/98/0. It does not, however, follow that the applicant's claim for costs succeeds because these documents were provided by the Council so late in the process.
14. I have found the description of development permitted by the 1972 permission to be ambiguous in its reference to 'a caravan or boat park for 24 units'. It has in this case been necessary to consider how the description of development should be interpreted. Even having the benefit of a more complete planning history for the site, the documents before me do not clearly demonstrate that the use of the site as a caravan site is permitted. As such, even if these documents had been available before the LDC application was made, it would be unreasonable to conclude that there would have been no need to seek an LDC at all. This is not least because I have found the use of the site as a caravan site to be permitted as part of a mixed use, and not as a single use.
15. Furthermore, the Council has provided a reasonable case to support its interpretation of the permission. I do not find this to be a change of the Council's case. They have responded to the late submissions, maintaining their view that the development subject of the LDC application is not permitted. Their case as made in their initial submissions and in response to the late evidence has meant that my decision on this matter has been finely balanced. Accordingly, I cannot conclude that the appeal would have been avoided, had the pre 1974 planning documents been provided prior to the determination of the LDC application. In these circumstances, it is unlikely that the Council would have reached a different conclusion, and I have no reason to find that they would have behaved unreasonably in doing so.
16. The submission of the late evidence has not meant that I have disregarded the applicant's appeal statements and final comments that had already been prepared and submitted. This earlier evidence has provided necessary context and assistance in the determination of the appeal. The late provision by the Council of documents requested by the applicant has, however, resulted in the applicant having to incur unnecessary costs in the consideration of it and in the preparation of the late submission to provide this evidence to the appeal.
17. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

18. 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 East Cambridgeshire District Council shall pay to Jason Barr of Barr's Residential & Leisure Ltd, the costs of the appeal proceedings described in the heading of this decision limited to the costs incurred in considering the documentary evidence contained in the applicant's email dated 10 October 2022 and the cost of preparing his response to that evidence which is contained in the same email; such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. The applicant is now invited to submit to East Cambridgeshire District 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.

J Moss

INSPECTOR