
Cost Decision

Site visit made on 1 August 2023

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 September 2023

Cost application in relation to Appeal Refs: APP/W1145/X/22/3305767 and W1145/X/22/3305711

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Torridge District Council for a full award of costs against the Encompass Training South West Ltd
 - The appeals were against a refusal of a certificate of lawfulness (LDC) for the siting of a mobile home and against the refusal of planning permission for the retention of a mobile home for staff accommodation for a three year temporary period.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. The Council considers that the appellants have acted unreasonably on a procedural basis. In respect of the planning application the appellant originally raised the prospect of a fallback position but changed from being immune due to the passage of time to being considered as not being development. The Council advised that either the proposal required permission or an application be made for an LDC of the fallback position. To avoid enforcement action the Council advised that should one caravan be removed, the other may be acceptable on an interim basis. The planning application was amended to include only one caravan but a LDC application was also made. The appellants were advised that procedurally one or both applications must be unacceptable as it is not possible to approve an LDC on the basis that the development had not occurred and also approve an application which accepts that development is occurring.
4. The Council considers that the submission of the LDC application alongside the planning application is unreasonable and wasted time and expense in having to determine both applications including the cost of seeking Counsel's advice. Additionally, the planning application is not in accordance with national and local policy as the applicants failed to provide a heritage impact assessment and supporting documents and sought to rely on a fallback when additional information was requested.

5. The appellants rebut the Council's position. The Council failed to grant temporary permission for one mobile home despite saying that they would do so. With the prospect of enforcement action and to protect the business, the appellants relied on the siting of the mobile homes being ancillary to the main house and not representing operational development. In the absence of the Council considering this approach during the planning application process, there was no option but to make an LDC application, which was the appellants' right and the Council should have determined the application on its own merits. The appellants disagree that the Council had no option but to refuse the LDC application because they had accepted the planning application. The appellants' approach does not represent unreasonable behaviour because the two applications have different considerations and fees were paid for both.
6. Recent planning at the site appears to have been triggered by an enforcement complaint which led to the submission of a planning application for the retention of two mobile homes. The Council requested additional information regarding heritage issues and the justification of residential need. Rather than providing this, the appellants claimed that planning permission was not required as there had been no development. The appellants were asked to withdraw the application (which was not done) and to submit one for an LDC.
7. In order to avoid formal enforcement action the appellants were advised to remove one caravan by February 2022 and make a revised application which may be supportable, with all the necessary information. Additional information was submitted and the LDC application submitted. As the appellants informed the Council that they had no intention to remove a caravan, an enforcement notice was served following refusal of the planning application.
8. I find that the Council's approach to dealing with the unauthorised development to follow best practice and it is evident that they were seeking a satisfactory negotiated outcome that would not be harmful to the appellants' business. The appellants have clearly assumed that permission would be forthcoming and have not perhaps fully appreciated that despite the Council's positive encouragement to submit an application, its success would have been dependent upon the material submitted.
9. I do not consider that the appellants' behaviour is unreasonable as a consequence of both applications running concurrently. Whilst the Council is correct in saying that both applications could not be approved, it is not an unusual occurrence for an appellant to cover more than one eventuality, or to put it simply, to hedge their bets. Not to pursue all possible options including consideration of a potential fallback position would not have been in the appellants' interests. The appellants exercised their rights to submit the LDC application in addition to the planning application. There is a distinction between the applications and both are determined differently as the LDC is dependent upon planning law whereas the planning application is considered on its planning merits.
10. The fact that the Council sought a legal opinion from Counsel and incurred costs in doing so, was a matter entirely for themselves.
11. I also note that the appellants provided the requested information for the planning application albeit that it was insufficient to support the appellants' case.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Peter Jarratt

Inspector