



Costs Decision

Hearing held on 8 August 2023

Site visit made on 7 August 2023

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 9th October 2023

Costs application in relation to Appeal Ref: APP/J3720/X/23/3320951

Edkins Park, 125a Aston Cantlow Road, Wilmcote, Warwickshire, CV37 9XP

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Park Venture Ltd for a full award of costs against Stratford-on-Avon District Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the existing use of the entire site (4.5 acres) as a caravan site in accordance with planning permission ref 63/5/8.
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Decision

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

The submissions for Park Venture Ltd

2. The costs application and the rebuttal to the Council's response were submitted in writing. No additional points were made orally at the Hearing.

The response by Stratford-on-Avon District Council

3. The response was made in writing. At the Hearing the Council referred me to the Planning Practice Guidance (the PPG) and the paragraphs that highlight the examples of behaviour that may lead to an award of costs against a local planning authority. It was also stated that no unreasonable behaviour has been demonstrated and that this is a very misconceived application.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the 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. It makes it clear that a local planning authority is required to behave reasonably and provides examples of unreasonable behaviour¹. The application was made in writing and therefore there is no need to rehearse the detailed points made.
5. The main thrust of the applicant's case is that the Council:
 - Failed to produce evidence to substantiate the reasons for refusal and made vague, generalised or inaccurate assertions about the evidence available, including a failure to properly interpret the evidence in respect of the planning permission granted in 1963.

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

- Failed to conduct a proper 'balance of probabilities' test regarding the evidence.
 - Refused to issue the LDC according to section 191(4) of the 1990 Act when it had an option to do so (with an alternative description in the First Schedule of the LDC).
6. My decision in the associated appeal hinged around the interpretation of the planning permissions² granted in 1961 and 1963 (the 1961 and 1963 permissions) that had been granted in relation to the use of the site, having regard to relevant caselaw. Given the age of the planning permissions and the documents associated with them that wasn't a straightforward matter in what was a relatively complex case. Interpretation and assessment of evidence submitted in support of an application for an LDC, particularly when interpreting old planning permissions and microfiche documents and plans, requires planning judgement to be exercised.
 7. Within the Council's Delegated Report (the report) associated with the LDC application the 1961 and 1963 permissions and the evidence submitted in relation to those permissions were assessed. I acknowledge that within that report the Council concentrated on the plans associated with the planning permissions. However, this is not surprising as the dispute in this case relates to the interpretation of the 1961 and 1963 permissions in respect of the site area/s that they apply to. Moreover, within the report it states that '*officers have had regard for the information provided by the agent in carrying out their assessment, however this report focuses on what is considered to be the most relevant, compelling and pertinent evidence..*'. The Council also submitted a statement of case and gave evidence orally at the Hearing. Therefore, I am not persuaded that the Council failed to produce evidence to substantiate the reasons for refusal.
 8. Even though not all of the separate pieces of evidence submitted by the applicant were cited within the report there is little to indicate that vague, generalized or inaccurate assertions were made, or that the Council failed to interpret the evidence properly or failed to carry out a 'balance of probabilities' test. I understand the applicant's frustration when receiving the refusal as they are convinced that the evidence supports their interpretation of the 1963 permission.
 9. However, whilst I did not agree with the Council's position in relation to the extent of the appeal site covered by the 1961 planning permission, ultimately, the appeal was dismissed as I found that the Council's decision was well-founded in relation to the 1963 permission. Consequently, I do not consider that the Council's actions were unreasonable, simply that I have exercised my judgement in a different way than it did in relation to the 1961 planning permission.
 10. Section 191(4) of the 1990 Act states that '*If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the*

² Refs 61/6/34 (the 1961 permission) and 63/5/8 (the 1963 permission)

application. The applicant considers that the Council should have issued an LDC for a greater extent/area of caravan site than granted by the 2008 LDC given the Council's findings in respect of the 1961 planning permission. Nevertheless, this is a complex issue involving planning judgement and the interpretation of the 1961 and 1963 permissions. Moreover, in my appeal decision I have found that I am unable to modify the terms of the LDC. Therefore, I do not consider that the Council acted unreasonably in this respect.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

D Boffin

INSPECTOR