



Costs Decision

Inquiry held on 24 – 25 October 2023

Site visit made on 23 October 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Costs application in relation to Appeal Ref: APP/D0840/X/23/3324851 Calamankey Farm Campsite, Longdowns, Penryn, Cornwall TR10 9DL

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Charlie Barton of Rosecliston Park Limited for a full award of costs against Cornwall Council.
 - The Inquiry was in connection with an appeal against the refusal of: *"Application for a certificate under Section 191 of the Town and Country Planning Act 1990 to confirm that condition 2 of planning permission W2/PA08/01056/F has been breached for a period exceeding 10 years."*
-

Decision

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

Submissions

2. A written submission was provided by the applicant and by the respondent. The applicant's reply to the respondent was given orally at the Inquiry and is summarised in Annex A.

Reasons

3. The 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.
4. Examples of unreasonable behaviour by a local planning authority, identified in the PPG, include the withdrawal of any reason for refusal and not reviewing a case promptly following the lodging of an appeal, as part of sensible on-going case management.
5. In this case, the day before the Inquiry opened, the Council sent an email stating that it accepted that the caravans have been used for residential rather than for holiday/leisure purposes for a period of more than 10 years before the date of the relevant application. (This acceptance is referred to by the Council as 'the partial breach' and by the applicant as 'the concession').
6. Nevertheless, rather than modify or substitute the description of the matter described in the application, pursuant to its powers under section 191(4) of the 1990 Act (which would have enabled a lawful development certificate to be granted), the Council had refused the application in its entirety.

7. What is more, the Council had left a live resubmission of the appealed application undetermined. Whilst a dispute remained between the main parties on how the relevant 2008 planning permission should be interpreted, in the particular circumstances of this case, the Council's email on the day before the Inquiry opened was a significant concession. For the purposes of the PPG, it was, tantamount to the withdrawal of a reason for refusal.
8. This means that the Council could (and should) have granted a lawful development certificate for 'the partial breach' accepted. Crucially, at the point that the email was sent, the Council retained the ability to do this, via the live resubmission. But no action was taken by the Council in this regard before the Inquiry opened or before it closed.
9. So the Council did not review its case promptly following the lodging of the appeal. Instead, the timing of the aforementioned email indicates that the Council left this until after the applicant had committed to the Inquiry, prepared for it and his representatives had set-off to travel to the venue.
10. The applicant considers that there would not have been an appeal if the Council had granted a certificate, and, that the issue of the dispute over its wording would have been dealt with by a further application. Although I am not satisfied this is the case, in light of the right of appeal contained in section 195(4) of the 1990 Act and the remaining dispute between the main parties over how the relevant planning permission should be interpreted. The interpretation dispute would still need to be resolved by an appeal. As such a full award of costs for the entire appeal is not justified.
11. In the alternative, the applicant seeks a partial award in respect of all costs incurred in the appeal process from the Case Management Conference (CMC) onwards. This is, in the applicant's view, the point at which the local planning authority would and should have expeditiously reviewed its case and clarified its position.
12. But the purpose of a CMC, as set out in the appeal start letter, is to discuss procedural matters only and not to discuss the merits of the case in any way. So I do not accept that the CMC represents a point in time in this case where unreasonable behaviour commenced, otherwise the CMC would be straying into the merits of the case.
13. Had the Council's position been clarified at the CMC, an appeal would still have been needed to consider the interpretation dispute and, in the event that I agreed with the Council's interpretation of the relevant planning permission, an Inquiry would likely still have been needed to consider the immunity evidence.
14. However, had the Council clarified its position sooner, the applicant would not have had to undertake any work for the appeal to demonstrate that the caravans/campervans have been used for residential rather than for holiday/leisure purposes for a period of more than 10 years before the date of the relevant application. As such, the applicant's costs in this regard were wasted.
15. Following the CMC, the Council provided redacted copies of Planning Contravention Notice questionnaires. The applicant states that, had the Council supplied this evidence during the passage of the application then the appeal

would have been avoided. But I do not agree, as it was clear at the Inquiry that the main parties were in dispute over what the questionnaires indicate.

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

17. 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 Cornwall Council shall pay to Mr Charlie Barton of Rosecliston Park Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of 'the partial breach' accepted by the Council; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Cornwall 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.

L Perkins

INSPECTOR

Annex A: The applicant's reply to the respondent

- The Council say the reality of the appeal is that an Inquiry was always going to take place. The Council cannot say that. That is a decision that could and would have been taken on issue of the now accepted appropriate lawful development certificate in 2022 (ie the concession which has now been made).
- By the time the concession was made the appellant was fully committed to the Inquiry. Had that concession been made a week ago the appellant could have made an informed decision at that stage. But by the time the concession was made it was too late.
- In an overall context what the response does not address is that the appellant resubmitted the application in June 2023 to provide an opportunity to avoid this Inquiry. That remains undetermined despite the concession made the day before the Inquiry opened.
- The Council have an ongoing duty, as does the appellant, of case management. A reasonable and expeditious case management of this matter could and should have resulted in either the concession being provided in good time or the June 2023 resubmission being determined in the context of the same concession.
- To not do either in good time is clearly unreasonable behaviour and regardless of whether the appellant is right or wrong about the severability of Condition 2 and or whether the appellant can establish a 10-year breach if it is severable, this Inquiry could have been avoided by either providing the concession expeditiously or determining the outstanding resubmission.