



Costs Decision

Hearing Held on 16 November 2023

Site visit made on 16 November 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2023

Costs application in relation to Appeal Ref: APP/U2235/X/22/3300066 Little Venice Country Park and Marina, Hampstead Lane, Yalding, Kent ME18 6HH

- 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 Albert Lee of Little Venice Country Park for a partial award of costs against Maidstone Borough Council.
 - The hearing was in connection with an appeal against the refusal of a certificate of lawful use or development for the proposed stationing of 10 caravans for holiday use.
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Decision

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

The submissions for Mr Albert Lee of Little Venice Country Park

2. The application is made in respect of the Council's first and second reasons for refusal, which relate to operational development and insufficient information. The Planning Practice Guidance (the Guidance) sets out examples of reasons for awarding costs against a Local Planning Authority including acting contrary to case law and failing to produce evidence to substantiate their case.
3. With regard to the first reason for refusal, operational development does not form part of either the application or the appeal. The application was described in an unambiguous way, namely for the stationing of caravans, which are defined in law. The Council strayed away from the confines of the application to take into account a completely extraneous issue, namely operational development. If the appeal is allowed, then the certificate does not provide for any operational development and it was unreasonable of the Council to take it into account when determining the application.
4. With regard to the second reason, the provisions and principles of *Burdle*¹ are well known. Deciding a planning unit is an exercise of judgement which has to be reasonably carried out. The 2019 LDC is conclusively presumed despite the Council's suggestion that it was wrongly decided and it was unreasonable of the Council to assert that the recreational use is a standalone use. Their position on the planning unit is unclear at best.
5. In conclusion, the unreasonable behaviour is the approach taken to the first two reasons for refusal. These were not substantiated with any reasonable

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

application of the law and this resulted in wasted expense by the appellant in having to deal with them at appeal.

The response by Maidstone Borough Council

6. The application was to station caravans for holiday use. In the Council's view that use could only take place in this location if the caravans were fitted with floatation devices. The Council asked for clarification on what was encompassed in the application and were told it was an application to station caravans. This led to the first reason for refusal.
7. In order to determine the planning unit, it is necessary to know the use that is taking place, whether it is authorised or whether it has moved on. It is for the appellant to identify the planning unit by going through the planning history. He has taken it as read that to use the site to station 120 caravans is part of the planning history. The Council's view is that there is a lack of clarity around this subject which led to the second reason for refusal.

Reasons

8. The Guidance advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense or wasted expense in the appeal process.
9. As I explained at the Hearing, planning permission may be granted for a house extension but the householder is unable to build it without building regulation approval. The LDC application was made under s192(1)(a) specifically for the stationing of caravans for holiday use and it is possible to consider whether that use would be lawful without having to go beyond the limit set by the application. Whether or not operational development is involved with the stationing of these particular caravans could be the subject of either another LDC application or a planning application. The Guidance states² the grant of a certificate applies only to the lawfulness of development in accordance with planning legislation. It does not remove the need to comply with any other legal requirements.
10. I find it was unreasonable of the Council to take operational development into account when determining the application and to persist with the subject at appeal. It was open to them to review their case when they received the appellant's Statement but it seems they did not. This led to wasted expense at the appeal.
11. With regard to the second reason, the Council were able to consider the appellant's very detailed, 10 page application covering letter, the planning history of the site and to take into account what they saw at their site visit. They may have reached a different conclusion on the planning unit from the appellant (as I did) but that conclusion still has to be reasonable.
12. The Guidance states³ that any LDC is to be conclusively presumed but the Council's interpretation of the 2019 LDC was unreasonable. With hindsight they may have had second thoughts about the 2019 description of the development but, nevertheless, that description remains as "existing use of land as ancillary recreational land *used in connection* (my emphasis) with Little

² Paragraph 4 Ref ID: 17c-004-20140306

³ Paragraph 2 Ref ID: 17c-002-20140306

Venice Country Park and Marina". Given this description, it is not a standalone use and as such it follows it is not a separate planning unit. The Council's view was therefore unreasonable.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated. This is in respect of the first and second reasons for refusal and that a partial award of costs is justified.

Costs Order

14. 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 Maidstone Borough Council shall pay to the applicant, Mr Albert Lee, the partial costs of the appeal proceedings described in the heading of this decision and incurred in respect of the first and second reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent to, details of those costs with a view to reaching an agreement as to the amount.

D Fleming

INSPECTOR