



Costs Decision

Site visit made on 7 December 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Costs application in relation to Appeal Ref: APP/X2220/W/23/3317631 Abbotscliff House, New Dover Road, Capel Le Ferne, CT18 7HZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Steven Lucas for a full award of costs against Dover District Council.
 - The appeal was against the refusal of planning permission for the continued use of land for the stationing of a caravan for use as short-stay holiday let, retention of adjacent deck, single storey building (shower/wc), together with associated parking, drainage, and landscaping.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The application is made on a substantive basis that the Council has behaved unreasonably by making inconsistent and unsubstantiated statements regarding the visibility of the proposed development, did not have sufficient regard to other appeal decisions, did not have proper regard to the requirements of the National Planning Policy Framework (the Framework) with respect to the weight to be attached to the policies of the development plan and was incorrect in its assessment of the site as lying within a Coastal Change Management Area (CCMA) and in the weight it placed on an emerging policy with respect to this issue.
4. The Council disputes these, contending that the site and the associated activity and use are apparent, that the considerations vary between different sites limiting the applicability of findings in relation to other locations, particularly where those sites are in other local authority areas even if it is the same designation, that it clearly explained its reasons for how the proposal was assessed, that the site does lie within a CCMA and that its decision in relation to this issue was consistent with the relevant paragraphs of the Framework rather than relying on a policy within the emerging development plan. The Council also contends that the application for costs was submitted late in the process.

5. Views of the caravan and toilet block are limited, but it would be possible for there to be glimpsed views given the expansive views that are available along the cliffs. I am therefore satisfied that the Council demonstrated reasonable planning judgement in assessing this matter.
6. Planning decisions must be taken on their individual merits, and cases such as this turn entirely on the assessment of the specific proposal in the specific location. The relevance of findings in relation to other sites would be limited. The Council expressed its case with a reasonable degree of clarity and I consider their assessment to fall within the bounds of a reasonable planning judgement.
7. The primacy of the development plan is set in statute and planning applications must be assessed against the policies of the development plan, irrespective of its age and consistency with the Framework. The weight to be attached is a matter of planning judgement, and I consider the Council demonstrated a reasonable exercise of planning judgement in how it carried out this exercise.
8. The costs application was submitted at a time allowed within the appeal process and would not have any bearing on my assessment of whether the Council has acted unreasonably.
9. The appellant's evidence contained an extract from the Policies Map showing the site did not lie within the CCMA. The Council's case with respect to this was not clearly articulated. It 'understood' that there was an error with the GIS data, but did not specify what this error is nor, crucially, confirm what land should be included within the CCMA. Figure 2.2 in Appendix 1 of the Council's Statement of Case is an indicative diagram that does not provide any further clarity. As such, the Council's assertion that the site lies within the CCMA was unsubstantiated, and there would be no reason to assess the proposal with respect to criteria for development within the CCMA, either in the Framework or the emerging Local Plan. The appellant was therefore put to unnecessary expense with respect to this issue.
10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the CCMA and a partial award of costs is therefore warranted.

Costs Order

11. 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 Dover District Council shall pay to Mr Steven Lucas, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Dover 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 Downs

INSPECTOR