The Planning Inspectorate

Costs Decision

Inquiry held on 5-6 March 2024

Site visit made on 4 March 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 02 April 2024

Costs application in relation to Appeal A Ref: APP/Y3940/X/23/3332453 and Appeal B Ref: APP/Y3940/X/23/3332851

Stonehenge Touring Park, Whatcombe Brow, Orcheston SP3 4SH

- 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 Countryside Park Homes Ltd for an award of costs against Wiltshire Council.
- The inquiry was in connection with two appeals against the grant of certificates of lawful use or development (LDC).

Decision

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

The submissions for Countryside Park Homes Ltd

2. The application was made in writing after the close of the Inquiry. The Applicant's final comments were also made in writing.

The response by Wiltshire Council

3. The response was made in writing after the close of the Inquiry.

Reasons

4. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

5. Section 191(4) of the Act provides the Council with three options when determining an LDC application; allowing the application in the terms sought, allowing the application as modified by them, or refusing the application. The Council would not have, based on the evidence that was available to them from the Applicant and Third Parties, issued the LDCs that were sought on the basis of the descriptions given on the application forms. Rather than refusing the applications they have, in both cases, granted an LDC for a modified description of what was applied for. This was not, in itself, unreasonable.

6. Because the LDC granted in both cases was fundamentally not that applied for both appeals were inevitable, as they would have been if the applications had been refused. So, the path taken by the Council in both cases has not directly led to any unnecessary or wasted expense for the Appellant in submitting the appeals.

There is no substance to the Appellant's accusation that the Council failed to co-operate at application stage. In any event, paragraph 4 above refers to unnecessary expense incurred, specifically, in the appeal process.

7. With regard to the application made under Section 191(1)(c) of the Act the Council's interpretation of condition 3 of PP1267 is that the permitted use of the land as a caravan site is limited to touring caravans only. It has been found in Appeal A that their interpretation is incorrect but it was not unreasonable for them to maintain their interpretation at application and appeal stages.

8. The Council did determine the Appeal A application as if it had been made under Section 191(1)(a) and they did seek to modify the terms of the permitted use of the land, by granting an LDC for 'use of land as a touring caravan site for holiday purposes…'. They did withdraw the 'holiday purposes' limitation at the Inquiry but to include this limitation in the LDC granted by them was unreasonable. But the appeal was inevitable and this has not resulted in the Appellant incurring any unnecessary or wasted expense.

9. With regard to the application made under Section 191(1)(a) the Council did grant an LDC for the use of land which they considered to be acceptable, rather than for a use of land that is lawful. The use they found to be lawful is very far removed from the use sought by the Appellant and introduces several limitations. This was unreasonable but the appeal, again, was inevitable, because it would have been made if the Council had refused the application.

10. The evidence presented on behalf of the Appellant during the appeal process and at the Inquiry would have been the same whether the Council had refused or allowed the applications, as they did but in modified terms. In this regard the Appellant has not incurred any unnecessary or wasted expense 'in the appeal process'. An award of costs is not therefore justified.

John Braithwaite

Inspector