



Costs Decision

Inquiry (Virtual) held on 4 June 2024

Site visit made on 6 June 2024

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05th July 2024

Costs application in relation to Appeal Refs: APP/U2235/C/24/3337973, 3337974, 3337975, 3337976 and 3337977

New Barn Sheep Farm, Frittenden Road, Staplehurst, Kent, TN12 0DL

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Michael Lott, Mrs Julie Lott, Ms Anne Lott, Mr Benjamin Lott and Ms Katherine Lott for a full award of costs against Maidstone Borough Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a material change of use of land for residential purposes including the erection of a dwelling and formation of hard-standings.
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Decision

1. The application for an award of costs is allowed in part 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 applicants criticise the Council's approach since 2020 when the breach of planning control was brought to the Council's attention. They highlight that given the Council's position on the grant of a temporary permission for the siting of a caravan in 2013, and a subsequent authorisation of a prior approval application in 2020 for an agricultural barn, the case for a rural worker was well established on the holding. The applicants assert that it was therefore unreasonable to pursue formal action in relation to the residential use of the site.
4. However, the policy requirements in either of the 2013 or 2020 permissions were, and are, different to that relating to a permanent agricultural worker's dwelling. Furthermore, there was little before the Council to indicate that the circumstances that existed in 2013 prevailed in 2020 or beyond. An application under the relevant prior notification procedure under the Town and Country Planning (General Permitted Development) (England) Order 2015 is limited to consideration of the matters of siting and appearance only. The associated test of 'reasonably necessary for the purposes of agriculture' is some way from demonstrating a full-time agricultural worker requirement.
5. As an exemption to the restriction to new housing in the countryside, rural worker's dwelling policy requires justification and qualification of various

- aspects of a rural enterprise. It was open to the applicants to provide this in 2016 when the caravan permission would have expired had it been implemented, or at any time since.
6. If planning permission is required for development, it is for the developer to seek it. In that context, there is little to suggest that it was unreasonable for the Council to consider it expedient to pursue further action, particularly given there was no dispute between the main parties that the alleged breach in relation to the residential use of the Land persisted.
 7. In the absence of demonstrating any exception to the Council's spatial strategy existed, I find it was not unreasonable nor 'bizarre' for the Council to refer to the overarching policies for the distribution of housing, nor aspects of sustainable development that underpin them.
 8. The applicants are critical of the Council's late concession to their grounds of appeal given the advice provided by Will Steel of Lambert & Foster, dated 23 December 2023. However, that document acknowledged that no detailed financial information had been provided sufficient to assess the financial test in Policy DM34 of the Maidstone Local Plan 2017 (or subsequent Policy LPRCD3 of the Maidstone Borough Council Local Plan Review 2021-2038). As only the 'basic ingredients' for assessment, I agree that it did not provide the comprehensive detail required to justify the exception to restrictions to new housing in the countryside.
 9. Only on review of the applicants' late written evidence did the Council consider sufficient information was provided such that the policy tests could be assessed and enable it to concede parts of its case.
 10. The applicants also assert that the Council erred in its application of established caselaw when it sought the removal of operational development that had existed for more than 4 years. However, since the relevant approaches were subject to review in the Court of Appeal and within the timescale of the applicants' appeal, and could have a bearing on the case outcome, I cannot find it unreasonable that the Council held its position until the decision was handed down and the additional information in relation to the material change of use had been received. In the instance where the applicants' statement of case highlights that 'it [the Council] cannot rationally argue the building, hard surfacing etc itself are the source of, or fundamental to, the change of use', perhaps the clarification in *Caldwell* was useful.
 11. However, there was some delay between the date of the *Caldwell* decision being handed down on 2 May 2024 and the Council's concession on 24 May 2024. Whilst I find there is legitimate reason for not conceding on the basis of the material change of use, as the applicants' case on ground (d) was only made out in relation to the operational development, early acknowledgement of the *Caldwell* decision implications would have negated the need to cover those matters further in proofs of evidence.
 12. Notwithstanding the brevity of the case made on that ground, I find that the Council's failure to act swiftly on that matter was unreasonable and led to some wasted expense in the run-up to the Inquiry.

13. Furthermore, the Council also failed to confirm its concession of the ground (c) appeal until the Inquiry had opened. On hearing that the Council conceded to all of the operational development, I find that the lack of clear communication by the Council on that matter was an unreasonable omission if it intended to concede, or unreasonably late, if not. It also would have inevitably caused some wasted expense during the appeal proceedings.
14. The applicants' forwarded an argument that the Council could have imposed conditions on the building. However, this could only be valid had the Council received a planning application. Alternatively, the appellant could have offered a unilateral undertaking to seek to avoid enforcement action. However, as neither instance had arisen, justification for pursuing enforcement action existed to prevent an open-market dwelling in the countryside in conflict with the development plan.
15. While such a breach existed, the Council's position of not withdrawing the enforcement notice was not without merit. It reasonably balanced the need to expediate the regularisation of the unlawful residential use of the Land through the ground (a) appeal procedure whilst minimising the burden on the applicants. Given the stage of proceedings and the committed effort and expense, a different route to planning permission, or confirmed lawfulness, might have incurred additional cost and prolonged uncertainty on the applicants.
16. I note the concern of the applicants that the Council's proposed imposition of various conditions was unreasonable. However, as I have found, several conditions meeting the tests set out in statute and the National Planning Policy Framework are reasonable and necessary to make the development acceptable in planning terms. I cannot find that amounts to unreasonable behaviour.
17. The applicants' criticism of the Council for taking action against a development with similar effects on the character and appearance of the locality as a temporary caravan is also noted. However, as such impacts are dependent on a planning justification of need, I find no fault in that approach.
18. The appellants are critical of the Council's timing in investigating the matter. However, the time limits set out in s171B allow for extended periods of time to take enforcement action.
19. I note the applicants' view that it was the Council's position to review the case for residential accommodation on expiry of the 2013 permission. Notwithstanding that that permission was never implemented, it required the removal of the accommodation after a period of 3 years. If accommodation was necessary after that time, it was the applicants' burden to seek the necessary planning permission.
20. The Council's earlier error in identifying the dwelling as the mobile home subject of the 2013 permission is not relevant to the subject of this costs claim. Although it may have subsequently been helpful for the Council to serve a Planning Contravention Notice on the applicants, it is not necessary for them to do so.

21. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the ground (c) and (d) appeals and a partial award of costs is therefore warranted.

Costs Order

22. 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 applicants listed in the banner heading above, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing the appeals on grounds (c) and (d); such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to Maidstone Borough 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.

R Hitchcock

INSPECTOR