
Costs Decision

Hearing Held on 16 July 2024

Site visit made on 16 July 2024

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2024

Costs application in relation to Appeal Ref: APP/U2235/W/24/3339812 Westfield Yard, Old Lidsing Road, Lidsing, Kent ME7 3NH

- 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 Gary Treeby for a full award of costs (or in the alternative a partial award) against Maidstone Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the use of land for the stationing of caravans for residential occupation.
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Decision

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

The submissions for Mr Treeby

2. The submissions were made in writing and the gist of the application is as follows.
 - The Council failed to take into account the existing lawful use of the site, which is the baseline for assessing the proposal. This is a fundamental flaw.
 - The Council maintain that the site is within the setting of the Kent Downs National Landscape, but it is not within that setting.
 - The site is within the countryside and cannot therefore encroach into the countryside as alleged. It is also previously developed land and its features have been in place for many years.
 - The Council allege harm to the character and appearance of the area, but the lawful use as caravan storage is more harmful.
 - No evidence has been offered in relation to the second reason for refusal dealing with noise. The Appellant was put to the expense of obtaining an acoustic report.
 - The Officer's report is contradictory in relation to its location, but in any event the Council has not specifically addressed the acceptability of the location in its report.
3. In essence the Appellant alleges that the Council has failed to substantiate its reasons for refusing planning permission. In addition the application alleges that the Council has failed to adhere to procedural deadlines.

4. The Appellant submits that the Council has prevented or delayed development which should clearly be permitted, failed to provide evidence to substantiate its reasons for refusal, made vague, generalised and inaccurate assertions about a proposal's impact, and not reviewed its case promptly following the lodging of the appeal. This is unreasonable behaviour.
5. As a result the Appellant has incurred unnecessary costs in having to pursue the appeal.

The response by Maidstone Borough Council

6. The gist of the Council's response, made in writing, is as follows.
 - The permission for use of the site for caravan storage was time limited and hence the use of the site for caravan storage would not have been its lawful use.
 - The Council's concerns regarding noise should have been addressed at application stage in accordance with Council requirements for a noise report. In the absence of a noise assessment the Council was entitled to make a judgement on the likely noise impact from the M2 at the site.
 - In lying some 110m from the boundary of the Kent Downs National Landscape the site is in its setting. The Council maintains its position in this regard and has been supported at appeal in the past in other locations.
 - Use of the word 'encroaching' when dealing with the countryside reflects the fencing and domestic paraphernalia which harms the character and appearance of the area.
 - It is for the Applicant to initiate pre-application discussions and the Council's requirements for development submissions are available to assist applicants. No advantage was taken of these mechanisms by the Appellant.
 - The Council's officer report makes it clear that matters at issue were properly considered and substantiated at appeal. The Appellant does not indicate which assertions it claims are vague, generalised or inaccurate.
 - No impact on the appeal process resulted from the unfortunate delay in reviewing the case and submitting the appeal questionnaire. These did not delay or prevent the case being heard.
7. The Council therefore argues that its handling of the case did not cause unnecessary delay and that it has provided evidence to substantiate all its retained reasons for refusal of the application.
8. As a result there was no unreasonable behaviour on the Council's part and an award of costs is not justified.

Reasons

9. Planning Practice Guidance 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.
10. In this instance the application alleges both substantive and procedural unreasonable behaviour.

11. In relation to substantive matters I found the case of the Council to be unconvincing. There was a lack of substance to its arguments dealing with landscape matters, and an apparent misreading or misunderstanding of the situation relating to the setting of the Kent Downs National Landscape. There was no credible evidence put forward to support the contention that there would be any harm to that setting. In its response to the costs application attention was drawn to appeal decisions elsewhere. I do not have the facts of those cases but the limited information before me indicates that they are likely to be significantly different to this case. In any event I must deal with the appeal on the basis of the particular circumstances and facts which it raises.
12. Similarly the evidence put forward in relation to the impact on the character and appearance of the countryside was at best lacking, but in reality gave no support to the suggestion that the proposal would result in harm, especially given the likely fallback use for the site. Indeed some evidence which was suggested as applying to the appeal site was actually concerned with an adjacent site, as became clear at the hearing. The Council's evidence on landscape matters was simply inadequate.
13. In relation to the location of the appeal site the Council's evidence was, at least in part, contradictory. The Officer's report suggests the site is not particularly remote, yet at the appeal the Council argued that the site is too remote from services. There was no submission of an appeal statement to explain this discrepancy and no credible evidence put forward which supported the Council's case. I have noted the claim that the Officer's report for this case was apparently changed prior to the issue of the decision on the proposal, but this changed report has not been produced. Evidence from the Council on this matter was therefore vague and inaccurate.
14. The Council chose not to contest the second reason for refusing planning permission at a late stage in the process. That reason for refusal had already led the Appellant to commission an acoustic report. The absence of a report previously did leave the Council in the position of having to make a judgement on the likely impact of noise from the M2 on occupants of the appeal site. That judgement could have been better informed had there been consultation with an environmental health officer in the early part of the proceedings. It is also the case that acoustic reports at application stage are only required by the Council when noise sensitive development (as here) is adjacent to sources of noise. The cited noise source, the M2, is not adjacent to the site but is some distance away, with intervening residential and other uses. Hence I do not accept the Council's argument that a noise report was necessary at application stage. But neither am I satisfied that the Council's behaviour was such that the Appellant had no option but to obtain an acoustic report. I accept in this case that the Council could have handled the matter of noise intrusion in a better manner during consideration of the planning application, but in the end the Appellant chose to commission the acoustic report. The Council's actions at application stage do not lead me to find unreasonable behaviour in relation to this procedural element.
15. On substantive matters, taken as a whole, I am satisfied that the Council has not been able to support its position at appeal with substantive evidence. Its submissions were indeed vague, generalised and inaccurate and unsupported by objective analysis.

16. In relation to procedural matters I have also noted that there was no appeal statement submitted and that there was some admitted delay in providing paperwork following the appeal being submitted. However I do not find that procedural flaws delayed the appeal hearing itself.
17. Overall I am satisfied that the Council has not substantiated its case at appeal sufficiently to justify the refusal of planning permission as set out above in relation to reasons for refusal 1 and 3. This amounts to unreasonable behaviour. It has led to an appeal which has caused unnecessary expense. I do not find that the procedural inadequacies had any impact on the appeal process and did not cause unnecessary or wasted expense in that regard.
18. However, in light of my findings above I find that a partial award of costs is justified based on the Council's inability to support and justify its reasons for refusing planning permission with regard to reasons for refusal 1 and 3.

Costs Order

19. 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 Mr Gary Treeby, the costs of the appeal proceedings described in the heading of this decision limited to those costs associated with reasons for refusal 1 and 3; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. 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.

Philip Major

INSPECTOR