



Costs Decision

Site visit made on 14 May 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Costs application in relation to Appeal Ref: APP/C1570/X/23/3332950 Land to the North of Cornells Lane, Widdington, Essex CB11 3SG

- 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 Dr and Mrs Michael Tee for a full award of costs against Uttlesford District Council.
- The appeal was against the refusal of a certificate of lawful use or development for the formation, laying out and construction of a means of access to Cornells Lane, Widdington, in connection with the use of land for charitable and private hire events for not more than 28 days in total in any calendar year.

Decision

1. The application for an award of costs is 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 applicants submit that the Council has acted unreasonably due to its failure to produce evidence to substantiate each reason for refusal on appeal; in making vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and acted contrary to, or not following, well-established case law. For those reasons, the applicants seek a full award of costs.
4. In the alternative, the applicants seek a partial award of costs in respect of the Council's finding that the applicants did not justify the permanency of the access nor that it would be proportionate to have a permanent access to enable temporary use rights to be exercised.
5. Creating an access using permitted development rights would result in a permanent change to the site. Development permitted by Class B, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO), as amended, does not need to be removed and the land made good once the temporary use is not taking place.
6. Determining whether the proposed access is required or not means that there must be a reasonable degree of need for it; it cannot just be desired. How one considers whether something is required will depend on the specific circumstances of the case, as a matter of fact and degree. In this case, the Council has considered the scale and proportionality of the proposed access as part of that assessment. Neither term can be found in Class B, Part 2 of Schedule 2 of the GPDO, but to my mind, both could be logical and reasonable

considerations due to the inherent link to highway considerations.

7. However, in the context of the GPDO, it is important to consider whether the means of access is required in connection with the temporary use of the land, not necessarily the number of days that the use takes place for. Although the Council recognised that the permanence of the proposed access was not an issue, it considered that the requirement for the proposed access did not exist by inferring a limited associated highway safety risk based on a limited use. However, that opinion is not supported by any analysis of the highway impacts of the use(s) or general highway safety considerations.
8. I recognise the Council responded to the information it received, but the proposed access could potentially be required for a one-off event, and the highway considerations, among other things, may justify that. In short, the Council's view that the length of the temporary use was not long enough to justify the proposed access was not backed up by any highway analysis. The Council's position was therefore a vague, generalised, and unsupported assertion that jars with what the GPDO permits, providing the means of access is 'required'. This is unreasonable behaviour, as the appellant has needed to address this as part of the appeal.
9. The Council's reason for refusal referred to 'operational development that will permanently alter the site'. However, that passage needs to be read in its full context, which effectively says that the development has not been demonstrated to be required to facilitate the temporary use. The 'required' aspect of Class B, Part 2 of Schedule 2 of the GPDO, was the principal reason why the Council refused the LDC. While the language used in the reason for refusal might have omitted reference to 'permanently alter', it has not caused unnecessary or wasted expense to be incurred in the appeal process given the Council's view on the access being 'required'.
10. Central to the Council's view on that was the lack of evidence provided by the applicants explaining why the existing access could not be used following work to improve it, thus negating the need for a new access to be created. That point was also made in its appeal submissions. Hence, the Council exercised its judgement and substantiated its case on appeal. Even if I had disagreed with the Council about the substance of their point, they would have still acted reasonably for those reasons. A difference of opinion does not equate to unreasonable behaviour.
11. The LDC before me comprised an identical access from Cornells Lane to that for which the Council granted a certificate of lawful use or development (LDC) ("previous LDC") in July 2022. The applicants claim that the Council has taken an inconsistent approach in determining both LDC schemes. They are correct insofar as the outcome of each is concerned with the same access. However, the situation behind that is more nuanced. This is because the temporary use(s) of the appeal site advanced in each case differ, a point made by the Council in the LDC scheme before me, and due to the evidence submitted by the applicants in respect of those use(s). The evidence in the scheme before me varied in detail, whereas the previous LDC was based on 80 to 90 pitches and 200 car parking spaces for a market use for up to 14 days per calendar year. Therefore, the outcome of the previous LDC does not, when there are factual differences between the evidence bases, mean that the same outcome will be reached. The key is the explanation.

12. The Council explained its position in its Appeal Statement. I agree with the applicants that it could have gone further in considering the specifics of each of the events cited, especially as there was no analysis within the Officer Report. But, given the Council's view about the existing access and the lack of evidence relating to that, even if the Council behaved unreasonably in not explaining why a different stance was being taken in refusing the LDC, it has not caused the applicants to incur wasted expense or resulted in the submission of an unnecessary appeal. This is because it would not have changed its view about the proposed access being 'required' or the consequential appeal to that decision. Therefore, unnecessary or wasted expense has not been incurred in the appeal process in this regard.
13. The planning history section is commonly included in Officer Reports on applications made to Council's up and down the country. Its existence here has not, in my mind, resulted in the Council misdirecting itself, as the subsequent analysis is the Council's rationale for its decision.
14. Whether the Council considered imposing a condition is immaterial. There is no power to do so on an LDC, but in any event, the Council refused the LDC, so no wasted expense has been caused in the appeal process.
15. The applicants wish to put the land to productive use, and while there has been a period of time since the LDC was submitted to the Council, the Council acted reasonably in reaching its view on the application. Appealing against that decision is not only the applicant's right but also their choice. I have explained where the Council has acted unreasonably and where they have not. The costs incurred by the applicants with respect to the latter are those that parties involved in the appeal process are expected to incur themselves.

Conclusion

16. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the scale and proportionality part of the Council's case, and a partial award of costs is therefore warranted.

Costs Order

17. 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 Uttlesford District Council shall pay to Dr and Mrs Michael Tee, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the scale and proportionality part of the Council's case; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicants are now invited to submit to Uttlesford 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.

Andrew McGlone

INSPECTOR