



Costs Decisions

Site visit made on 30 July 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2024

Costs application in relation to Appeal A Ref: APP/Y3615/X/24/3340049 11 Chinthurst Park, Shalford, Guildford, Surrey GU4 8JH

- 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 Mrs Josephine Naish for a full award of costs against Guildford Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the siting of a caravan for use ancillary to the lawful existing residential use.
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Costs application in relation to Appeal B Ref: APP/Y3615/X/24/3343419 11 Chinthurst Park, Shalford, Guildford, Surrey, GU4 8JH

- 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 T & CPP Limited for a full award of costs against Guildford Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the siting of a shipping container within the land edged red on the attached plan for use ancillary to the lawful residential use.
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Decisions

1. The application for an award of costs for Appeal A is refused.
2. The application for an award of costs for Appeal B is refused.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises¹ 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.
4. The PPG explains² that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include, failing to produce evidence to substantiate each reason for refusal on appeal, not determining similar cases in a similar manner, or if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way.
5. Although some of these examples refer to applications for planning permission, the same could be applied to applications for a lawful use or development (LDC).

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

Appeal A

6. The main thrust of the applicant's costs claim is that, shortly after refusing the appeal application, the Council granted an LDC in relation to an identical application³ ("the later application"). It is claimed that had the Council been consistent in its decision making then it would have issued an LDC, and the appeal would have been avoided and the applicant would not have incurred the unnecessary and wasted expense in pursuing the appeal.
7. Although all the information submitted as part of the later application has not been provided, it is clear from both the decision notice and the officer's report that there were similarities with the appeal application. The officer's reports for both applications are almost identical, with the only significant difference being, unlike on the appeal application, it is stated that the red line boundary included the dwellinghouse itself.
8. The single reason for refusal given on the Council's decision notice in respect of the appeal application was that "*The application is not supported by sufficient information to confirm whether the proposed caravan would be considered operational development under section 55 of the Town and Country Planning Act 1990*". The Officer's report for both applications refer to a previous appeal decision⁴ from March 2023 against the Council's refusal to grant an LDC. In that decision the Inspector stated "*where a LDC relates to a caravan, the word should be construed in accordance with the statutory definition. The application need not be supported with detailed plans of the caravan, or indeed details of its siting, and the Council could have assumed it would meet the lawful definition*".
9. It is apparent that no detailed plans or information relating to the proposed caravans were provided in relation to either application. It is therefore unclear why the Council considered that the level of information provided was insufficient to determine whether the caravan proposed in the appeal application would constitute operational development, but was considered sufficient around a month later when assessing the caravan in the later application.
10. However, the Officer's report for the appeal application also details that the Council were concerned that as the dwellinghouse was not contained within the red line boundary, the application suggested that the use of the caravan would be independent and not functionally integrated. Even though I found that this reasoning was flawed, it nevertheless demonstrates that the applications were not identical, and that the Council based its decision on the specific circumstances of the information that had been provided. This in my view does not amount to unreasonable behaviour.
11. Whilst the apparent inconsistency in how the Council assessed whether the caravans proposed at the two sites would amount to operational development is regrettable, the Council's concerns regarding the potential implications of the red line boundary and use of the caravan in the appeal application would have remained. As such, I find it highly unlikely that the appeal would have been avoided.

³ Council Ref: 24/P/00045

⁴ APP/Y3615/X/22/3300740

Appeal B

12. The applicant claims that it was unreasonable for the Council to conclude that the shipping container was a building for planning purposes, as “an identical shipping container” had been found not to be a building by two other Council’s when issuing LDC’s. In particular, the applicant considers that the Council should have been aware of the inconsistency of the decision made in this case as two of the referenced LDC’s were issued by Waverley Borough Council⁵ who share the same “Chief Planning Officer”.
13. The LDC’s issued by Waverley Borough Council relate to the siting of containers ancillary to the lawful agricultural and residential uses of the two respective sites. I have not been provided with all the details submitted in relation to those LDC’s, nevertheless, given that they relate to different sites and uses it would not be surprising if a different set of circumstances applied to them. Consequently, irrespective of whether the Council’s share the same “Chief Planning Officer”, it is not unreasonable for different conclusions to be reached due to the specific and different circumstances of each proposal and site.
14. The other LDC referred to (titled “Example 2”) was issued by North Warwickshire Borough Council⁶ and relates to the siting of a shipping container related to the agricultural use of a field. Clearly this decision is of very limited relevance in terms of evidencing the claimed inconsistent decision making by the Council, and in any case appears to involve a much different set of circumstances than the appeal case.
15. The applicant also considers that the Council’s finding that insufficient information had been provided to conclude that the use of the shipping container would be incidental to the enjoyment of the dwellinghouse, and that the container would not fit within the appeal site, were unreasonable and could not be substantiated. Notwithstanding my findings on these matters in the appeal decision, given the Council’s position that the container constituted a building in planning terms, it is clear that the appeal would not have been avoided and therefore these matters have not resulted in unnecessary or wasted expense.
16. Finally, the applicant states that the Council’s reference to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”) was the wrong test, as the shipping container was not a building and therefore not development requiring planning permission. However, as can be seen from my appeal decision I have found that the shipping container does constitute a “building” and therefore the provisions of the GPDO were relevant and applicable.

Conclusion

17. For the above reasons, I find that in relation to Appeals A and B unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Jones

INSPECTOR

⁵ Council Refs: WA/2024/00634 & WA/2024/01129

⁶ Council Ref: PAP/2024/0107