



Costs Decision

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Costs application in relation to Appeal Ref: APP/L2630/C/23/3333564 Hill House, The Green, Saxlingham Nethergate, Norfolk NR15 1TE

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Darren Swayne of Elsewhere (UK) Limited for a full award of costs against South Norfolk District Council.
- The appeal was against an enforcement notice alleging:
 - Without planning permission:*
 1. *The material change of use of the Land from a dwellinghouse (Use Class C3) with associated grounds, gardens and buildings to a mixed use as a dwellinghouse, holiday accommodation (not within Use Class C3) and commercial events venue (including but not limited to use for celebrations, parties, gatherings, stag / hen dos, corporate events) including large scale outdoor commercial events, glamping and provision of ancillary services and storage, and the siting of a straw bale horseshoe structure, three lorry containers and paraphernalia used in association with the unauthorised use (Sui Generis)*
 2. *Operational development consisting of the creation of a straw bale horseshoe structure measuring 33.5m by 23m and the siting of three lorry containers.*

Decision

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

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. I should highlight that there is a long planning history associated with this appeal site, and costs can only be awarded in respect of wasted or unnecessary expense in respect of this particular appeal.
4. The applicant says the Council's behaviour has been unreasonable in several ways, procedurally and substantively. Specifically, the applicant says the Council's decisions on two applications for Lawful Development Certificates (references 2022/2086 and 2022/2098) (LDC Applications) which related to similar development to that alleged in the Enforcement Notice were unreasonable, given previous advice provided to the applicant by the Council. The applicant says the Council also acted unreasonably with regard to a retrospective planning application (reference 2024/0426/F) for a similar development to that alleged in the EN, particularly with regard to proposed conditions. Finally, the applicant says the Council's behaviour was unreasonable

in respect of the appeal itself, notably in relation to the steps required to comply with the EN and the acceptance of late evidence.

5. Prior to the submission of the LDC applications, the Council advised the applicant that the Events Field could benefit from the temporary use rights afforded by Class B of Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). However, following submission of the LDC applications, the Council concluded that the Events Field formed part of the same planning unit as the rest of the appeal site, which had implications for their assessment of the temporary use rights, and whether these could apply.
6. The Council's initial email advice was given informally and was not binding on them. It was therefore not unreasonable for the Council to reach a different conclusion following submission of a formal application. Indeed, the information submitted with the formal application would likely have been more detailed, which would have enabled a more considered and comprehensive view.
7. Whilst I concluded the appeal site is made up of three planning units, this position is not straightforward nor clearcut. As set out in the appeal decision, there is some limited degree of overlap between each of the three planning units, both functionally and physically. It was therefore not unreasonable for the Council to reach a different view, noting their reasons were clearly set out in the delegated reports associated with the LDC Applications.
8. The Council's conclusion with regard to the planning unit, which was not unreasonable, affected their assessment of the temporary use rights, and whether these could apply to the Events Field alone. Ultimately this was one of the factors which led to refusal of the LDC applications, which was a logical consequence of their position on this point.
9. A significant level of local concern had also been raised in respect of the highway safety implications of the development. It was therefore not unreasonable for the Council to consider highways data which had previously been collected in respect of the appeal site when reaching their decision, even if the circumstances along that highway had since evolved.
10. Overall, the Council's reasoning and justification for their decisions in respect of the LDC Applications was comprehensive and thorough. Whilst I may disagree with their overall conclusion, neither their decisions nor their decision-making were unreasonable.
11. It is logical that enforcement action would have been taken following refusal of the LDC Applications, as the development which was the subject of these applications had been found to be unlawful. Given the extent of public opposition, the pressure for such action was also acute. In terms of the notice itself, the steps required related directly to the matters alleged in the notice, and therefore went no further than remedying the alleged breach of planning control. Notwithstanding the outcome of the appeal, the steps were therefore not disproportionate.
12. Soon after the enforcement notice was issued, a planning application (reference 2024/0426/F) was submitted for the development alleged in the EN. This application was recommended to committee for approval, subject to planning conditions to regulate the development. The applicant says many of

these conditions were unreasonable, and that the Council's conduct in respect of the conditions was also unreasonable.

13. Because the appeal has succeeded on grounds (c) and (d), I have not needed to assess the conditions with regard to the ground (a) appeal. However, many of the suggested conditions arose directly from the content of the noise management plans prepared by the applicant, and were included expressly to ensure adequate noise controls were maintained over the development. Whilst I make no findings as to whether these conditions would have met the statutory tests, this approach appears to have been a rational starting point for consideration.
14. Similarly, given the conflicting accounts of local residents with regard to the impact of the development, the suggestion of a temporary condition was not without merit. Whilst again I make no finding in terms of the statutory tests for such a condition, the Council's position on this was not unreasonable.
15. In terms of the appeal itself, late evidence is not encouraged, and it was reasonable for the Council to resist the acceptance of additional documents so soon before the hearing, notwithstanding its potential relevance to the grounds of appeal.
16. Overall, and for the reasons outlined, I find the Council has acted reasonably throughout the appeals process, and throughout the events which led to the appeal. Unreasonable behaviour resulting in unnecessary or wasted expense has therefore not occurred and an award of costs is not warranted.

James Blackwell

INSPECTOR