
Costs Decision

Hearing Held on 10 October 2024

Site visit made on 10 October 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 4th November 2024

Costs application in relation to Appeal Ref: APP/J0405/X/3287648 Wing Caravan Site, Wing Road, Wing, Buckinghamshire LU7 0LB

- 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 Mr Gerard O'Connor for a full award of costs against Buckinghamshire Council.
 - The Hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development (LDC) for a caravan site for eight residential plots, vehicle plot, work area, an amenity block and additional landscaping subject to conditions 2,5,8,10,15 and 16 of planning permission reference 07/01648/ACC which enures only for the benefit of Aylesbury Vale District Council.
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Decision: the application succeeds in part and a partial award is made in the terms set out in the Costs Order below

The submissions for Mr Gerard O'Connor

1. The Council considered the LDC application for some two years without issuing its decision. The Council never gave a reason for not issuing a decision. The Council has failed on appeal to substantiate the reasons it now relies on. The Council has failed to follow well-known case law and, had it done so, it would have granted an LDC earlier. The Council has taken every possible route but has struggled to find a reason to substantiate its position. The Secretary of State assented to the Consent Order straight away and it is not now open to the Council to argue against what it consented to. The Council issued a Breach of Condition Notice which it did not withdraw, despite being invited to do so. The Council should have issued a LDC and should have been no need for this Hearing.
2. The PPG imposes a duty on all parties to keep their case under review. The Council should have done so after the Consent Order was made. The Consent Order made it clear that the Inspector had erred in law, not only in paragraph 36 of the Decision letter but also in the preceding paragraphs 18 to 35. It was unreasonable for the Council to continue with the original arguments.

The response by Buckinghamshire Council

3. The previous costs Decision was not quashed at the same time as the main Decision. The Council had requested that the appeal was determined under the Written Representations procedure. The Consent Order refers to paragraph 36

of the Inspector's Decision but the Council considers that its position in relation to Regulation 3 applies in this case.

Reasons

4. The Planning Practice Guidance (PPG) 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 or wasted expense in the appeal process. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG states that the right of appeal should be exercised in a reasonable manner and goes on to provide example of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include acting contrary to, or not following, well established case law and failure to produce evidence to substantiate each reason for refusal on appeal.
5. The Council initially considered that the planning permission granted in 2007 (Council ref: 07/01648/ACC) had been abandoned. This was the basis on which the Council defended the appeal against the failure to give notice within the prescribed period of its decision on an application for a certificate of lawful use or development (LDC). Indeed, the previous Inspector accepted the Council's arguments and dismissed the appeal.
6. This all changed with the Consent Order handed down by the High Court on 2 November 2023. This was signed by Legal Services Buckinghamshire Council. In signing the Consent Order, the Council thereby accepted that a use of land cannot be abandoned.
7. This effectively left the Council with nowhere to go. The principles in case law, as set out in *Pioneer Aggregates (UK) Limited v Secretary of State for the Environment* [1985] 1A.C. 132, are well-known and long-standing, the judgment dating from 1984. More recently, the principles in *Pioneer Aggregates* were endorsed by the Supreme Court in *Hillside Parks Ltd (Appellant) v Snowdonia National Park Authority* [2022] UKSC 30.
8. The Council really ought to have conceded at that point. From the date of the Consent Order onwards, by continuing its resistance to granting the LDC the Council must have been aware that it was acting contrary to and not following well established case law. Not only had a High Court judge said as much, Legal Services Buckinghamshire Council has signed the Consent Order, thereby confirming that the Council accepted that position. Continuing with the appeal after that date without good reason is unreasonable behaviour for the purpose of the PPG.
9. Nevertheless, the Council continued with an argument that, as I understood it to be, the 2007 permission was a unique permission that can only enure for the benefit of the Council (as the successor to Aylesbury Vale District Council). But that was already common ground. The appellant had already said as much in terms in his original Hearing Statement submitted with the appeal, and re-stated in his Further Representations Regarding Redetermination dated July 2024.
10. From my reading of the Council's evidence and comments made at the Hearing, the Council's decision to contest the appeal was in no small part a

response to not knowing what the applicant's intentions are in pursuing a permission that on his own evidence he cannot implement/complete. In this respect, there is a parallel with the principle of estoppel by convention, whereby one party seeks to alter a previously agreed assumption. The Council was therefore faced with the proposition of defending an appeal the outcome of which offered no apparent benefit to the applicant. In those circumstances, it is perhaps understandable that the Council decided to continue with the appeal, notwithstanding that established case law clearly favoured the appellant's case.

11. Indeed, I asked that very question myself at the Hearing. In response, the answer given was vague and evasive. I recognise of course that the applicant is under no obligation whatsoever to reveal his intentions in relation to this or any other site. On the other hand, if the reason for the application is simply to establish a position (for example, for valuation purposes), I see no harm and much benefit in explaining that purpose. On the face of it, and in the absence of any explanation from the applicant, there is no obvious or logical reason for the LDC to be submitted. Revealing that purpose could have assuaged any concerns that the Council had in terms of the future of the appeal site and enabled the Council to re-evaluate its position much sooner.
12. However, that is not a point taken by the Council. The PPG is very clear: costs may only 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. In this case, the Council's unreasonable behaviour following the Consent Order did cause the appellant unnecessary and wasted expense in continuing with the appeal. Both the conditions set out in the PPG have been met and an award of costs is therefore justified in relation to the period following the Consent Order.
13. The appellant also made an application for costs against the Council at the previous Hearing. The Inspector ultimately refused that application. However, that Costs Decision was not quashed by the High Court at the same time as the main Decision. That application for costs has already been determined. That decision has not been disturbed. I have no jurisdiction to revisit that decision.

Costs Order

14. 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 Buckinghamshire Council shall pay to Mr Gerard O'Connor, partial costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred by him following the Consent Order dated 2 November 2023; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Buckinghamshire 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.

Paul Freer
INSPECTOR