



Costs Decision

Site visit made on 23 July 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: 20th November 2024

Costs application in relation to Appeal Ref: APP/U2235/X/23/3332814 Redwood Farm, Scragged Oak Lane, Detling, Maidstone ME14 3HL

- 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 Maidstone Borough Council for a full award of costs against Mr & Mrs Jimmy and Julie Hickmott.
 - The appeal was 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 for the siting of a caravan for use ancillary to the lawful agricultural use of the land.
-

Decision: the application is allowed in the terms set out in the Costs Order below

Reasons

1. 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 an appellant. These examples include resistance to, or lack of co-operation with the other party or parties in providing information and delay in providing that information.
2. The essence of the Council's claim for costs is that the appellants were late in providing information; that the submitted evidence lacked commentary or assessment; and that the appellants were following a predetermined course of action that resulted in an unreasonable lack of any willingness to work with the Council to resolve the disagreement relating to the validity. I will consider these points in turn.
3. The applicant explains that the appellants chose to submit the appeal and then waited some eight months before disclosing to the Council information relevant to the submission. The latter took the form of some appeal decisions in which the appellants' agent had been successful, including on the grounds that the local planning authority concerned had sought the completion of CIL 1 Form which the Inspector found was not necessary and overly bureaucratic.

4. The Council has a point. The findings of the Inspector in that case, whilst case-sensitive and not binding on the Council, were pertinent to the question as to whether a CIL 1 Form should be completed or not. The appeal in question, which related to a site in Hindhead in Surrey (APP/R3650/W/22/3300338), was determined in October 2022. This was about a year prior to the submission of the application for the LDC. There is absolutely no reason why that appeal decision could not have been provided to the Council when the need for a CIL 1 Form was first questioned, and every reason why it should have been. Not least to support the appellants' own case.
5. As the Council points out, had the appeal decisions been submitted earlier and the applicant engaged in an open-minded discussion with the Council, the need for the current appeal could have been avoided. But the appellants chose not to do that claiming, without any explanation or justification, that it would have made no difference if the information had been submitted earlier or not. The appellants' behaviour in that respect was contrary to the guidance in the PPG, which cites lack of co-operation in providing information and delay in providing that information as examples of unreasonable behaviour by appellants.
6. When the appeal decisions were submitted with the appellants' application for costs, there was little in the way of commentary or assessment to accompany them. I have no reason to believe that this prevented the Council from understanding the point that the appellants were making: the Inspector's reasoning was clear in each of those decisions and the point being made should have been readily apparent to the Council. Consequently, whilst the absence of any commentary or assessment was not helpful (to me or the Council, or for that matter to the appellants), I do not consider that the appellants acted unreasonably in this respect.
7. In its application for costs, the Council quotes the response of the appellants in relation to the absence of the CIL 1 Form. I find that response to be instructive and it is therefore worth re-quoting it here:

"We dispute that this type of application requires completed copies of CIL Form 1 and Form 2 ... as such, exercise the appellants' right to dispute this local requirement ... under Article 12 ..., where upon the applicants could move on to Section 62 and challenge for non-determination. Please see Notice submitted under Article 12 attached above for your attention" (emphasis added).
8. The appellants responded to other parts of the Council's application for costs, but made no comments about this particular quote. I also find that instructive. It is apparent from this quote and the language used that the possibility of appealing on the grounds of non-determination was in the appellants' minds even at that time (3 August 2023). I put it no higher than that. But, on the evidence before me, I get the distinct impression that the appellants were out to prove a point and in doing so lost sight of the main objective.
9. That impression is reinforced by the appellants' other actions. This whole episode could have been completely avoided had the appellants simply completed a CIL 1 Form when the application was first submitted. Had they done so, the application would in all probability have been determined many months ago. The appellants' costs in submitting the appeal, and the Council's costs incurred in defending the appeal, would have been completely saved.

10. In this context, the appellants were well aware that the siting of a caravan is not a building, and therefore not chargeable development for CIL purposes. So why not just tick a box on the CIL 1 Form to confirm that? The appellants had nothing to lose by doing so, and much to gain in terms of having their application determined promptly and with minimum cost.
11. I recognise that the Council was technically not in a position to insist upon a CIL 1 Form being completed. But rather than taking a pragmatic approach and taking a few minutes to complete a simple CIL form, the appellants embarked upon a protracted and expensive appeal process, including seeking advice from Counsel. The appellants have provided no rational explanation as to why they took that course of action. In the absence of that explanation, I am inclined to agree with the Council that the applicant's decision not to complete a CIL 1 Form indicates a predetermined course of action and an unreasonable lack of any willingness to work with the Council to resolve the disagreement relating to the validity of the application. In that respect, the language used in the appellants response on 3 August 2023 is good evidence of the appellants' mindset at that time.
12. The appellants' behaviour in that respect was again contrary to the guidance in the PPG, which cites resistance to, or lack of co-operation with the other party or parties in providing information and delay in providing that information as examples of unreasonable behaviour by appellants.
13. The appeal should never have been necessary: it was entirely open to the appellants to complete a CIL 1 Form and thereby avoid costs being incurred all round. The appellants unreasonable behaviour resulted in the Council incurring unnecessary and wasted costs in defending this appeal. 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, both the conditions set out in the PPG have been met and a full award of costs against the appellants is therefore justified.

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 Mr Jimmy and Mrs Julie Hickmott shall pay to Maidstone Borough Council the full costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mr Jimmy and Mrs Julie Hickmott, 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