
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 Rosewood Farm, Scragged Oak Road, 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 Mr & Mrs Jimmy and Julie Hickmott for a full award of costs against Maidstone Borough Council.
 - 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.
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Decision: the application is refused

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 a local planning authority. These examples include lack of co-operation with the other party or parties.
2. The essence of the applicant's claim for costs is that the Council refused to validate the application the subject of this appeal because a CIL 1 Form was not completed. In support of that position, the appellant refers to two appeal decisions, one relating to a site in Hindhead, Surrey (APP/R3650/W/22/3300338) and the other to a site in Tenbury Wells, Worcestershire (APP/W1850/X/22/3295616).
3. The first of those appeal decisions (APP/R3650/W/22/3300338) concerned circumstances that were almost identical to those in this case, insofar as the initial planning application had not been validated simply because the applicant had not submitted a CIL 1 Form. The Inspector in that case found that whilst it may well be the Council's procedure to require a completed CIL 1 Form for each and every application, even where it was indicated that there is no CIL liability, failing to validate the application was overly bureaucratic and unreasonable, especially because this was a case where the Council would have granted planning permission in any event. The Inspector made an award of costs against the Council on that basis.

4. I do not share the Inspector's view that requiring a completed CIL 1 Form for each and every application is overly bureaucratic and unreasonable. The submission of a planning application (or an application for an LDC) is a statutory process. I recognise that the submission of the CIL 1 Form at planning application stage is technically a 'local' authority procedure but the need for a form at validation stage is set out in national guidance, including in advice to applicants on the Planning Portal. In that context, the Planning Portal advises that the purpose of the CIL form is to allow the local authority to make a full and proper assessment of whether development is CIL liable.
5. I am aware that the latest version of the Council's Validation Check List makes no mention of caravans under the heading of 'CIL Payments'. However, this does not alter my conclusions, for three reasons. Firstly, this was not the version of the Validation Checklist in place on the date the application for the LDC was submitted. Secondly, for the reasons set out in my main Decision and summarised below, I have already found that the Council could not rely on the 'Local List' that was in place on that date. Thirdly, for the reasons set out in my main Decision, it is in any event my own view that caravans are not chargeable development for the purposes of CIL.
6. I have found that the 'Local List' for the purposes of Article 11(e) of the Town and Country (Development Management Procedure) (England) Order 2015 (DMPO) was published (or republished) more than 2 years before the date on which the LDC application is made. Consequently, the requirements set out in Paragraph (2)(e) of Article 11(1) did not apply on the date that the application for the LDC was submitted. In that respect, the Council's insistence on the completion of a CIL 1 Form was unreasonable behaviour for the purposes of the PPG.
7. But that does not automatically mean that an award of costs should be made against the Council. The behaviour of the applicants in this case also needs to be taken into account. This whole episode could have been completely avoided had the applicants 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 applicant's costs in submitting the appeal, and the Council's costs incurred in defending the appeal, would have been completely saved.
8. In this context, the applicants 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 applicants had nothing to lose by doing so, and much to gain in terms of having their application determined promptly and minimising their costs.
9. 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 applicants embarked upon a protracted and expensive appeal process, including seeking advice from Counsel. The applicants have provided no rational explanation 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.

10. This brings me back to the second appeal decision relied upon by the applicants (APP/W1850/X/22/3295616). In that case, the award of costs against the Council was predicated, in part, on the Inspector's finding that the Council had not dealt with the application in a timely way and had not sought to resolve any ambiguity regarding the proposal earlier in the process. The Inspector considered that it was highly likely that the appeal could have been avoided altogether had it done so. On that basis, the Inspector concluded that the Council's unreasonable behaviour resulted in the appellant incurring unnecessary or wasted expense, such that a full award of costs was justified.
11. I draw a direct parallel between the Council's unreasonable behaviour in that case and the applicant's behaviour in this case. Had the applicants sought to resolve any ambiguity by the timely completion of a CIL 1 Form, the unnecessary and wasted expense in making and responding to the appeal would have been entirely avoided.
12. I therefore conclude that the Council's unreasonable behaviour in insisting upon the completion of the CIL 1 Form did not cause the applicant any unnecessary and wasted expense. If anything, the applicants brought that expense upon themselves by not just taking the simple expedient of completing a CIL 1 Form when the application was first submitted. 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 not been met and an award of costs is therefore not justified.

Paul Freer
INSPECTOR