



Costs Decision

Hearing held on 19 June & 06 September 2024

Site visit made on 05 September 2024

by Chris Preston BA (Hons) Town and Country Planning, BPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Costs application in relation to Appeal Ref: APP/R1038/X/23/3332574 Pinegroves Caravan Park, High Lane, Tansley, MATLOCK, DE4 5BG

- 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 David Ray Limited for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of an application for a certificate of lawful use for the use of land for the siting of static and touring caravans, without any control on the numbers of each.
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Decision

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

The submissions for Mr David Ray

2. The costs application was submitted in writing and the content will be familiar to the parties involved. Consequently, the following is a brief summary of the main points.
3. The application is made on procedural and substantive grounds. In procedural terms the Council introduced evidence late in proceedings relating to the Barton Park Estates Ltd Court of Appeal judgment. The late submission of that information resulted in unnecessary correspondence and the applicant having to prepare a written submission which would have been unnecessary if the information had been submitted on time.
4. On substantive grounds the Council acted contrary to well-established caselaw when seeking to argue that the siting of caravans did not relate to a use of land. Moreover, the Council's interpretation of the 2003 permission was irrational and the contention that the applicant at the time did not intend to make a change of use application was not supported by evidence. Similarly, the Council's argument that the red line location plan that accompanied the 2003 application did not form the site location plan identifying the extent of the land was speculation.
5. The Council was aware that condition 6 of the 1984 permission limited the use of the site to touring caravans only and therefore that some form of variation to that condition would be required to station statics on the land. The subsequent permissions must therefore have either approved a variation of condition or been for a material change of use. They could not simply be for operational development.

6. The site location plans on the 2003 and 2009 applications clearly encompassed the whole of the caravan park and it was irrational for the Council to argue otherwise. It is also inaccurate to say that the 1994 permission did not vary or remove condition 6 of the 1984 permission. That permission was clearly granted under s73 of the Act, as acknowledged in 2021 by Mrs Wraith, and the Council has cherry picked its approach to the way in which permissions should be interpreted.
7. The LPA also examined the 2003 permission with reference to the PPG and DMPO, neither of which were in existence when the application was made.
8. Overall, the Council generated a contrived reason for refusal, to fit its own narrative, despite acknowledging that the applicant's position was essentially correct. Had it approached the application in a neutral and reasonable manner the CLOPUD would have been granted and the appeal would not have been necessary. That unreasonable behaviour led to wasted expense in the entirety of the appeal and a full award of costs is justified.

The response by North East Derbyshire District Council

9. Similarly, the Council's response was made in writing and the following is a brief summary of the main points.
10. The interim submissions made on behalf of the Council were submitted at the request of the Inspector. The matter was complex. Caselaw is not evidence of itself but the explanation of legal principle or approach. Both parties are bound to bring relevant caselaw to the attention of the Inspector and it is not unreasonable to respond to poorly conceived submissions on matters of law.
11. Legal submissions of Mr Ponter had previously been submitted and the Council did not deviate from that position. The case is far removed from one in which a full or partial award of costs is justified. In terms of chronology, the case was proceeding by written representations until the Inspectorate agreed to a request to change the procedure to a Hearing. Parties are generally expected to be able to present their cases without the need for an advocate.
12. The Council discovered that the applicant would be represented late in the day, after the deadline for final comments but the Council had not been notified of this in advance, contrary to good practice. Thus, the Council sought to engage a barrister but Mr Ponter was not available due to the late stage and Mr Grant took on the case. On a review of the papers he promptly referred to the Barton Park Estates case which was a case Mr Rudd would be familiar with. It was clear in the Hearing that he was able to respond and make submissions on it.
13. On the substantive points it is wrong to say that the Council relied upon the PPG/DMPO and that that led to an incorrect legal approach. Prior to the start of the appeal the applicant was informed those matters were not being pursued.
14. The applicant has consistently put forward a muddled case with regard to the interpretation of the relevant planning permissions. The Council has been consistent in stating that permissions subsequent to the 1984 permission were inset permissions and it defended that position clearly at the Hearing, on the balance of probability. Given that the use of land was already a caravan site, the changes proposed in the 2003 permission would not have amounted to a material change of use across the planning unit as a whole.

15. The applicant's submissions with regard to the red line plan were not well-made for reasons set out at the Hearing and the Council was not unreasonable in its interpretation of the plans submitted with the 2003 application. There was nothing irrational in the way the Council approached the 2003 application as a whole and it did not act contrary to established case law.
16. The case for an award of costs is not made out.

Reasons

17. 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.
18. Dealing with the procedural issues first, reference to the Barton Park Estates judgment was made late in the day by the Council. I am not entirely satisfied that can be put down to the change in procedure; if the judgment was of relevance, it was equally relevant whether the appeal was proceeding by the written method or by Hearing. Equally, it should have come as no surprise to the Council that the appellant would be represented by Mr Rudd, given his involvement in the case since 2019.
19. Notwithstanding that the issues raised were of relevance to the appeal and I would have been minded to ask questions relating to the judgment even if it hadn't been raised by Mr Grant. Thus, the applicant's response was not unnecessarily incurred, even if the Council was unreasonable in terms of the timing of its submissions. The need to an adjournment and a second sitting day did not arise solely as a result of reference to that judgment but in regard to other questions raised by myself and due to the length of time taken to discuss the planning history of the site.
20. That second point brings me onto the substantive claim. The fact that so much time was needed to run through each relevant application was indicative that the matter was not straightforward. Even though my decision did not favour the Council, there was nothing unreasonable in its approach. It received legal advice from Counsel and maintained that various permissions subsequent to the 1984 permission were inset permissions rather than permissions governing the whole site. It was clear from my site visit that the siting of statics across the caravan park had developed incrementally over a number of years.
21. I appreciate that dialogue between the parties had continued for a number of years in an attempt to narrow down the issues in dispute, such that the 2003 permission was the focus of the dispute by the time the appeal was submitted. Nonetheless, in order to establish whether the use, as described, would be lawful it remained necessary to consider the full extent of the planning history at the Hearing.
22. Trying to ascertain the nature of each permission subsequent to the 1984 permission was not a straightforward task. In fact, the applicant's position has altered over the years in respect of the meaning of various permissions and the extent of land over which they have relevance. For example, in November 2020, the advice of Mr Rudd was that the 1994 permission "varied" condition 6 of the 1984 permission but only over a limited area¹. By the time of the

¹ Paragraph 9 of the "Further Opinion" dated 10 November 2020

Hearing, the applicant's position was that a permission granted under s73 would inevitably cover the same site area as the 1984 permission, in other words, the whole site.

23. Similarly, the applicant's position has changed with respect of whether the 2003 permission was one pursuant to s73 of the Act or whether it was for a material change of use of land. Mr Rudd concluded that it was for a material change of use in his Further Opinion dated 29 February 2024. When summing up at the end of the Hearing Mr Gandhi asserted that either the 1994 or 2003 permissions were granted under s73.
24. That is not to say the applicant had unreasonably changed position. My reason for highlighting those matters is simply to point out the difficulty in interpreting the various permissions. It was not unreasonable to come to one view or the other in terms of the meaning of the consents or the area to which they pertain. Both sides included reference to caselaw in relation to the issue of site location plans and how they should be interpreted and that was symptomatic of the way in which the case was put as a whole. Very little about it was straightforward and every aspect required careful consideration such that neither side behaved unreasonably.
25. I do accept that some of the Council's interpretation came across as an effort not to concede anything for fear of the potential outcome. For example, trying to argue that the "siting of" caravans could imply operational development as opposed to a use of land was plainly implausible and contrary to well established terminology. Nonetheless, the question of whether permissions were for a material change of use or were made under s73 was far more complex, as was the issue of interpreting the plans and extent of the site area of each approval.
26. In that respect, the application for an award of costs on substantive grounds is bound to fail. In the face of the often conflicting and unclear evidence that is available in respect of the planning history of the site the Council's interpretation was patently not unreasonable. Anyone looking at the facts objectively would be able to see that it was a case where careful judgement was required, as opposed to a case where one side had unreasonably stuck to an untenable position. In fact, the only wasted time was in having to explain, in writing, what should have been obvious which is why the costs application should be unsuccessful.
27. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred in either substantive or procedural grounds and an award of costs is not warranted.

Chris Preston

INSPECTOR