



Costs Decision

Hearing held on 26 November 2024

Site visits made on 25 & 26 November and 10 December 2024, and 9 January 2025

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 19 February 2025

Costs application in relation to:

Appeal Ref: APP/D0840/C/24/3347999 “The Planning Appeal”

Land east of Trago Farm, East Taphouse, Liskeard, Cornwall PL14 4NH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr S Ayres for a partial award of costs against Cornwall Council.
 - The appeal was against the refusal of the Council to grant planning permission for the change of use of the land to a private Gypsy Site consisting of five pitches including 5 mobile homes, 5 touring caravans, 5 utility buildings and associated works.
-

Appeal Ref: APP/D0840/W/24/3347998 “The Enforcement Appeal”

Land east of Trago Farm, East Taphouse, Liskeard, Cornwall PL14 4NH

- 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 S Ayres for a partial award of costs against Cornwall Council.
 - The appeal was against an enforcement notice alleging “Without planning permission, the material change of use of the land from agricultural to residential (Gypsy Site) through the stationing of caravans for residential purposes along with associated operational development, including the construction of timber outbuildings/utility buildings, kennels, domestic sheds, raised timber decking, erection of fencing and the creation of hardstanding areas and access track.”
-

Decision

1. The application for a partial award of costs is allowed in the terms set out below.

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. The Planning Appeal and the Enforcement Appeal are determined concurrently in my Decision Letter of even date. At the Hearing into those appeals, the Appellant clarified that this application for an award of costs relates solely to the fees charged by the Council in relation to ground (a) of the Enforcement Appeal. S.177(5) of the 1990 Act provides that where an appeal against an enforcement notice is made on ground (a), the Appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.

4. The fees for planning applications, and deemed applications under s.177(5), are set nationally by the government as detailed in the *Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012* as amended (“the Fees Regulations”). The PPG explains that the local planning authority must decide the fee which will apply to the application based on the category, or categories, of development. These categories are itemised in the table at Part 2 of Schedule 1 to the Fees Regulations. The table has two sections: the first, headed “Operations”, contains eleven categories of development while the second, headed “Uses of Land”, contains three. I note that this table is reproduced, under the heading “Statutory planning fees (from 6 December 2023)” in the Council’s *Fees and Charges Document: Planning, Building Control and Land Charges* (January 2024).
5. In calculating the fee payable for the deemed planning application in this particular case, the Council proceeded on the basis that the mobile homes should be treated as buildings, chargeable under the “Operations” section of Table 2 as Category of Development no. 1: “The erection of dwellinghouses”.
6. I can find no authority for that proposition within Table 2, the 2012 Fees Regulations, or the Council’s *Fees and Charges Document*. Regulation 2 explains that for the purposes of the 2012 Fees Regulations, “dwellinghouse means a **building** [my emphasis] which is used as a single private dwellinghouse and for no other purpose”.
7. The question of whether, and if so when, a mobile home or any other type of caravan might be regarded as a “building” for planning purposes has been the subject of a considerable volume of caselaw. The Courts have established that it will be a matter of judgment as to whether a mobile structure (such as a caravan) amounts to a building, and that judgment should be informed by three primary relevant considerations: size, permanence and physical attachment.¹
8. That does not appear to have been the approach taken by the Council. It has published a document titled *Planning Fees and Charges Supplementary Guidance Document* (Revised October 2024), the preamble to which states “The following information is provided for guidance and clarification with regards to how Cornwall Council interprets the fee regulations.” Under the heading “Buildings and Caravans” the document states – correctly – that “When considering whether structures or erections are buildings you have to consider their size, permanence and physical attachment to the ground.” But it then goes on to say that “For fee purposes a static caravan or park home will be treated as a ‘building’ if the proposed development remains in situ for more than 10 months per year” and to clarify that “The above also applies to gypsy and traveler [sic] sites”.
9. I have grave reservations about that approach. It seems to me that applying a blanket ruling as to when a caravan is to be treated as a building, based on the sole criterion of how many months it remains on site each year, disregards the acknowledged need to assess other relevant considerations (including the degree of attachment to the land, and permanence in the wider context). Gypsies and Travellers usually live in caravans as an integral and necessary part of their nomadic lifestyle. Whether or not they move every day is immaterial; their ethnic and cultural identity is to always be able to move.

¹ *Cardiff Rating Authority v Guest Keen Baldwin’s Iron and Steel Co Ltd* [1949] 1QB 385, endorsed by the Court of Appeal in *Skerrits of Nottingham Ltd v SSETR* (No. 2) [2000] 2 PLR 102

10. In this particular case, the breach of planning control alleged by the enforcement notice is the unauthorised material change of use of the land, “through the stationing of caravans for residential purposes along with associated operational development.” The notice (entirely correctly, in my view) firstly identifies what the material change of use is and how it has occurred, and then goes on to identify the associated operational development that has been carried out as part and parcel of that unauthorised change of use. The Council’s case in the Enforcement Appeal, and consequently the deemed application for planning permission, proceeded on the basis that the mobile homes are caravans and should be treated as such for the purposes of development control. It was no part of the Council’s case that the mobile homes could or should be treated as buildings, and so it is difficult to see why they should be treated as buildings when calculating the fee payable for the deemed application.
11. Put another way, the deemed application under ground (a) of the Enforcement Appeal was for planning permission for the development alleged by the notice to be a breach of planning control. As set out in paragraph (4) above, the local planning authority must decide the fee which will apply to each application based on the category (or categories) of development. Here, the Council’s approach to calculating the fee correctly reflected the fact that the development alleged by the notice involves different categories of development: by reference to the table at part 2 of the Fees Regulations, the change of use of the land falls within development category 14, and the construction of outbuildings within development category 2. But the Council’s fee calculation also incorrectly included an additional category of development that formed no part of the development alleged by the notice: the erection of dwellinghouses, which falls within development category 1. The fee for the deemed planning application has therefore been calculated by reference to a different category of development than that for which planning permission is sought. No justification for this has been provided.
12. The Council drew my attention to its correspondence with staff at the Planning Inspectorate, in which the validity of a putative appeal was at issue. In that case the development involved “static caravans/lodges”, and the correspondence notes that in order to calculate the fee payable, the Council had carried out an assessment of the size, degree of permanence and physical attachment of the units. That is a perfectly reasonable approach, and it is entirely plausible that the assessment led to a reasoned conclusion that the static caravans/lodges at issue in that case were buildings. However, there is no evidence that any such assessment of the relevant considerations was carried out here; or any explanation of why, if it was, it reached a conclusion so at odds with the breach alleged by the enforcement notice.
13. The Council also drew my attention to extracts taken from the online guidance known as “Planning Resource”, and from Martin Gooddall’s book *The Essential Guide to The Use of Land and Buildings under the Planning Acts including the Use Classes Order*. Neither of those extracts provide any support for the Council’s approach of treating a mobile home as a building simply because it remains in situ for more than 10 months in a year. Rather, both “Planning Resource” and (as far as I can ascertain) Mr Gooddall are of the view that when determining whether a static caravan should be treated as a building for planning purposes, it is necessary to make an assessment based on the degree of permanence, and attachment, of the structure in question.

Conclusion

14. Taking all of this into account, I find that the method of calculating the fee payable for the deemed planning application was unreasonable. It was not reasonable to calculate the fee on the basis of a development category which formed no part of the development alleged by the enforcement notice, and it was not reasonable to treat the mobile homes as buildings solely on the basis of how many months they would remain in situ each year, without reference to other relevant considerations.
15. This unreasonable behaviour on the part of the Council meant that the fee the Appellant was required to pay for the deemed planning application was considerably higher than it would have been if correctly calculated by reference to the development categories involved in the breach of planning control alleged by the notice.
16. I conclude that unreasonable behaviour resulting in unnecessary expense has occurred in respect of the fee charged for the deemed application on ground (a) of the Enforcement Appeal, and a partial award of costs is therefore warranted.

Costs Order

17. 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 Cornwall Council shall pay to Mr S Ayres the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in (a) the difference between the fee charged by the Council for the deemed application in the Enforcement Appeal which incorrectly included an amount charged for each mobile home as if it were a building, and the fee that would have been payable had the fee been correctly calculated without reference to that category of development; and (b) the costs incurred in contesting the fees charged for the deemed planning application in the Enforcement Appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

Mr Ayres is now invited to submit to Cornwall 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.

Jessica Graham

INSPECTOR