Planning Inspectorate

Costs Decision

Inquiry held on 27 & 28 February 2024

Site visit made on 27 February 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Costs application in relation to Appeal Ref: APP/X1545/X/22/3298784
Waterside Country Park, Main Road, St Lawrence, CM0 7LY

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Maldon District Council for a full award of costs against Waterside Country Park Ltd.
- The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for use of land for the stationing of static caravans for the purposes of human habitation throughout the year.

Decision

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

The submissions for Maldon District Council

2. The costs application was submitted in writing. The following additional points were made orally. The entirety of the appeal should not have been brought due to the matter of issue estoppel. The wasted costs are the entirety of the cost of defending the appeal. At the point of closing submissions, the Council remain unaware of the appellant's response to the issue estoppel point. The appellant has said that it refers to paragraphs 8 to 20 of their closing submissions, but the Council has not seen those submissions and will therefore have no opportunity to respond to them.

The response by Waterside Country Park Ltd

3. The response was made in writing. The following additional points were made orally:-

   The appellant relies on the written submissions in closing at paragraphs 8 to 20 that there has clearly been a material change in circumstances justifying the re-consideration and rejection of the authority's reliance on issue estoppel.

   The claim in respect of the statement of common ground (SOCG) must be assessed in the context of what is actually contained within the SOCG as to what is agreed, disagreed and the partiality of the written evidence relied upon by the authority. An earlier SOCG would not, and could not, have resulted in any lesser documentation or preparation and as a consequence there are no wasted costs arising in respect of the timing of the SOCG.

Reasons

4. 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. Awards against a party may be either procedural or substantive.

5. The Planning Practice Guidance (PPG) on Appeals provides that the right of appeal should be exercised in a reasonable manner and sets out what type of behaviour may give rise to a substantive award of costs against an appellant. This may occur when the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period. It also includes in enforcement and lawful development certificate appeals, that the onus of proof on matters of fact is on the appellant. It goes on to state that 'sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed'. An appellant is at risk of an award of costs, if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question.

6. The main point of the claimant's case is that the respondent should have been precluded from pursuing the appeal on the basis that issue estoppel acts to prevent a person from re-opening a question(s) that have been adjudicated upon by a 'court of competent jurisdiction'. While the Council suggests it had no opportunity to comment on the appellant's points made in closing submissions, its substance is that the case of *Breckland District Council v SSHCLG and Plum Tree Country Park Limited [2020] EWHC 292 (Admin)* comprises a material change in circumstances. *Breckland* was raised by the appellant in its statement of case and was discussed during the Inquiry. Indeed, the Council addressed its substance in its closing submissions.

7. I have considered the case of *Breckland* in detail within the substantive decision letter attached to this decision. Whilst I do not propose to repeat the entirety of that matter, I found that the whole matter (as it is advanced by the appellant in this instance) was not fairly and squarely before the previous Inspector in determining the previous appeal decision[1] (the "2019 Appeal").

8. Accordingly, I have concluded that the respondent was not estopped from advancing their argument in respect of the application of *Breckland* to the use established as immune from enforcement within the 1971 EUC and the effect, if any, on the necessity of the 1983 Permission and subsequent permissions. It follows that the appeal could not have been avoided and therefore wasted expense has not arisen in this regard. Reference is also made to the respondent failing to draft a statement of common ground (SOCG) in a timely manner which the applicant contends would have narrowed down the evidence to have been provided within the proofs of evidence. However, in the absence of any detailed explanation as to what parts of the evidence were avoidable and in light of my findings, I take the view that, even if the respondent behaved unreasonably in failing to engage with the applicant to provide the SOCG, the applicant has failed to demonstrate what evidence was unnecessary such that wasted costs were incurred in its preparation.

[1] Appeal decision: APP/X1545/X/18/3202485

9. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

E Brownless

INSPECTOR