The Planning Inspectorate

Costs Decision

Site visit made on 1 April 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14 April 2025

Costs application in relation to Appeal Ref: APP/K0940/X/24/3347478
Priory View Camping and Caravan Site, Sandhall, Ulverston LA12 9EQ

- 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 McCann for a full award of costs against Westmorland and Furness Council.
- The appeal was against the refusal of a certificate of lawful use or development for use as a residential unit (consisting of a converted building to form residential accommodation and a caravan).

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 provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

2. By way of background, on 12 March 2024 the Council issued an enforcement notice alleging, without planning permission, the siting of a static caravan for the purposes of residential habitation. The appellant lodged an appeal against that notice (APP/K0940/C/24/3342121), but on 19 April 2024 the Council withdrew the notice.

3. The essence of the applicant's claim for costs is that the Council gave no explanation as to why an enforcement notice was issued for the siting of a static caravan for the purposes of residential habitation if there was already a live enforcement notice on the site. Additionally, the applicants point out that no point during the lifespan of the enforcement notice issued in March 2024 and/or the submission of the application for a certificate of lawfulness did the Council draw their attention to the live enforcement notice. This is also considered to constitute unreasonable behaviour.

4. In support of that position, the applicant points out that representatives from the previous South Lakeland District Council and current Westmorland & Furness Council have visited the site a number of times over the last 10 years and met with the applicants, often within the building subject of the appeal. At no point was this historic enforcement notice raised with the applicant.

5. A Freedom of Information Request (FOI Request) was submitted to the Council on 22 July 2024, requesting them to provide any internal and external correspondence when the historical enforcement notices were mentioned. The Council refused to provide this information as part of the FOI, the reason given (in summary) being that the Council considered that the information requested pertains to matters which impact the environment in terms of the Environmental Information Regulations 2004 and as such was exempt from disclosure under those regulations.

6. The applicant considers that (in their view) this total lack of transparency by the Council in relation to this site displays unreasonable behaviour. The applicant further considers that had the Council been transparent, then a different approach than the certificate of lawfulness would have been taken by the applicant thus saving on the appeal and the associated costs with both the LDC appeal and the enforcement notice appeal.

7. The first element of the applicant's claim for costs, namely that the Council gave no explanation as to why an enforcement notice was issued for the siting of a static caravan for the purposes of residential habitation if there was already a live enforcement notice on the site, does not relate to the refusal of the LDC application against which the appeal was made. It relates to an enforcement notice which, although an appeal was lodged against it, was subsequently withdrawn. This was a different appeal to that now before me. For that reason alone, an award of costs cannot be made in relation to this appeal: if an application for costs was to be made on this ground, it should have been made in connection with the appeal against the enforcement notice.

8. The wider point is that the Council is not obliged to explain that a live enforcement notice is fatal to the lawfulness of a use of the site where that use is conflict with the requirements of that notice: that much should have been apparent from the provisions at section 191(2)(b) of the Town and Country Planning Act 1990 (the 1990 Act). I appreciate that this may not have been immediately apparent to the applicants if they are unfamiliar with planning law, but nevertheless it was entirely open to them to discover that fact upon receipt of the Council's Decision Notice for the LDC (by taking professional or legal advice if necessary).

9. As the Council explains, the LDC application was determined on the basis of the information available to it at the time. There is no requirement within the 1990 Act or the PPG for a local planning authority to engage with the applicant during the determination of the application if the local planning authority considers the application to have no prospect of success on the evidence before it. This can include evidence not provided with the application but discovered by the local planning authority itself during determination of the application.

10. The Council goes on to explain that historic appeals are not indexed on its website nor that hosted by the Planning Inspectorate. I am advised that the

Council's own website advises applicants/appellants request a land charge search and/or request inspection of the enforcement register. I am not aware of the applicant doing either of these things before the LDC application was submitted. It is reasonable to conclude that, had they done so, they would have discovered the full extent of the enforcement history relating to this site, including the enforcement notice cited by the Council in its Decision Notice for the LDC application.

11. Indeed, it is instructive that following the receipt of the Decision Notice for the LDC application, the applicants did request that historic enforcement notices were provided. In response, the Council provided copies of three historic Enforcement notices. It occurs to me that, if the applicants had made that request before the LDC application was submitted, they would have known about the enforcement notice attacking the residential use of the building. They would then have made the LDC application in the knowledge of the enforcement notice, and either provided evidence to show that it did not apply to the building in question or maybe not submitted the LDC application at all. The corollary is that no wasted expense would then have been incurred.

12. I note that Council officers have visited the appeal site on many locations, but had not previously mentioned the live enforcement notice relating to the site. This could have been simply because those officers were not aware of the enforcement notice at those times, and/or were not asked about the enforcement history of the site during those visits. In any event, the absence of any reference to the enforcement history of the site does not absolve the applicants from carrying out their own due diligence before submitting the LDC application.

13. There is also another consideration here. The Council has submitted evidence as part of its response to this application for costs that the previous occupiers of the site (namely Mr D.E. McCann and Mr E.T. McCann) may had/have prior knowledge of the enforcement history of the site through their involvement in a previous appeal relating to this site (T/APP/C/96/M0933/644387). It is in my view again instructive that the applicant does not respond to this evidence in detail as part of their costs rebuttal comments.

14. The FOI request, and the Council's response to it, are not relevant to my consideration of this application for costs. I have no jurisdiction in that regard. If the applicant was dissatisfied with the Council's response to the FOI request, there are other forums through which that could have been pursued.

15. I recognise that the Council could perhaps have been more forthcoming in response to the LDC application that was before it. For example, it could have alerted the applicants to the live enforcement notice relating to the site and the implications for likely outcome of the LDC application before making its decision. The applicant could then have decided whether or not to continue with the application, or perhaps explore other options.

16. The National Planning Policy Framework does encourage pre-application discussions, and the PPG makes it clear that a local planning authority may be at risk of an award of costs against it if it refuses to enter into pre-application discussions. However, the example in the PPG is predicated on the assumption that a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

17. That is not the case in this instance. The existence of a live enforcement notice against the residential use of the building was fatal to the prospects of success for the LDC application. Consequently, there was no real prospect of the issue being narrowed or the appeal being avoided altogether.

18. The salient point, however, is that the Council was under no obligation to enter into pre-application discussions in this instance. In an LDC application, the onus is squarely on the applicant to show that the use was lawful on the date on which the application was made. Based on the information available to the Council at the time, it clearly was not. The applicant has subsequently been unable to discharge that burden of proof that falls upon them on appeal to show that the use was lawful on the date the LDC application was made. The Council cannot therefore be said to have acted unreasonably in the terms set out in the PPG.

19. The secondary point is that it was always open to the applicants to have discovered the existence of the live enforcement notice before submitting the LDC application ,either through a land charge search or inspection of the Council's enforcement register. This again goes to the burden of proof that is upon the applicant in the submission of a LDC application.

20. 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, I find that the Council has not acted unreasonably. It follows that an award of costs is not justified.

Paul Freer
INSPECTOR