
Costs Decision

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2025

Costs application in relation to Appeal Ref: APP/U2235/X/24/3357771 Rosewood Farm, Scragged Oak Road, Delting, Kent ME14 3HL

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Town & Country Planning Partnership Limited 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 (LDC) for a Lawful Development Certificate for proposed siting of a caravan for use ancillary to the lawful agricultural use of the site.

Decision

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

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 PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the substance of the matter under appeal. It makes it clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour for both¹.
4. The main thrust of the applicant's case is that the Council refused to validate the LDC application when they should have validated it, the Council did not submit a Statement of Case within the timetable and when the statement was submitted it was based on erroneous evidence as there was no valid planning reason to argue that the LDC should be refused.
5. Within my substantive decision I have found that the LDC application was a valid application for the purposes of Article 39 of the 2015 Town and Country Planning (Development Management Procedure) (England) Order 2015 (the 2015 DMP) and section 193 of the 1990 Act. As such, the Council's refusal to validate the LDC application amounts to unreasonable behaviour.
6. However, the Council confirmed in its submitted evidence that *'if the application had been valid, the council would have refused the certificate of lawful development on the grounds that the application fails to demonstrate that the caravan would not*

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

require the benefit of planning permission'. Moreover, in a LDC application, the onus of proof is squarely on the applicant. The evidence submitted in support of the LDC application included the application form which briefly stated that *'the siting of a caravan for use ancillary to the lawful agricultural use of the site would not constitute development for which planning permission would be required, the caravan would be sited within the redline surrounding the application site shown on the accompanying plan'*. That application form also stated that the existing and proposed use of the site was agriculture/agricultural. Yet, it is clear from the evidence before me that the whole site was a single planning unit in a mixed use of agriculture and a gypsy and traveller site at the time the LDC application was made. Furthermore, the gypsy and traveller site element of the mixed use was in breach of condition/s attached to a planning permission.

7. The Council stated within its evidence that the level of agricultural use on the land is minimal and thus the occasions when the land would need to be visited would also be minimal. It also stated that there is no evidence submitted of any agricultural holding on the site. The Council appears therefore to have assessed the LDC application in terms of the agricultural use that formed part of the mixed use. As set out in my substantive decision I do not agree with the Council's position and have concluded that the deemed refusal was not well-founded.
8. Whilst the applicant may consider that the arguments were *'blindingly obvious to any reasonable person'*, the onus in an application for an LDC is upon the applicant. I acknowledge that the description of the proposed use does not mention a mixed use. Nevertheless, the information provided on the application form with regard to the existing use of the site is misleading and the applicant provided little evidence to explain specifically what the lawful agricultural use referred to in the description of the LDC application was. The cited lawful agricultural use could be construed to refer to the agricultural use as part of the mixed use or the agricultural use of the whole site once the mixed use had ceased.
9. A legal opinion was submitted as part of the appellant's evidence at final comments stage during the appeal process which indicates that *'the argument, in essence being put forward was that once the planning permission for the personal mixed use of agriculture and as a gypsy/travellers site had expired then the lawful use would revert to that of agriculture to reflect the position before that temporary permission was granted. I note that the application itself was on that basis ...'*. This legal opinion highlights that the cited lawful agricultural use relates to the agricultural use of the whole site once the mixed use had ceased i.e. proposed agricultural use. If that fact had been explained within the evidence supplied with the LDC application, then I agree with the applicant that the arguments were more straightforward. However, there is no substantiated evidence that it was. Consequently, I consider that the Council's actions were reasonable in this regard.
10. The appellant has drawn my attention to a costs decision² where the Inspector found that *'failing to validate an application for such a change of use – which is clearly not CIL-liable – is overly bureaucratic and unreasonable, especially in this case where the Council would have granted planning permission, as it had previously done for the northern part of the field.'* However, as stated above, in this case the Council has stated that it would have refused the LDC application. I

² Appeal Re: APP/R3650/W/22/3300338

therefore consider that the circumstances relating to the case before me are materially different to that case.

11. Overall, even though I have found the Council's behaviour in failing to validate the LDC application was unreasonable, the appeal would still have been necessary to address whether the proposed use would be lawful. As such, there cannot be any unnecessary or wasted expense incurred by the applicant. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D Boffin

INSPECTOR