



Costs Decision

Site visit made on 8 April 2025

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 28 July 2025

Costs application in relation to Appeal Ref: APP/U2235/W/24/3354950 Orchard Place, Benover Road, Yalding, ME18 6AU

- 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 G Fuller for a full award of costs against Maidstone Borough Council.
- The appeal was against the refusal of planning permission for change of use of the land for the siting of 3no. static caravans and 3no. touring caravans for Gypsy/Traveller occupation as a single site, with associated hard and soft landscaping and habitat/biodiversity improvements (part retrospective, revised scheme to 18/506342/FULL) .

Decision

1. The application for an award of costs is partially 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 appellant is seeking an award of costs against the Local Planning Authority as they consider that the Council has acted unreasonably by introducing new reasons for refusal relating to residential amenity and effects on the setting of a listed building (LB), when determining the application, Council reference 24/500393/FULL, that were not included in the reasons for refusal for a previous application, Council reference 22/502896/FULL (the initial application).
4. In respect of the planning decision, overall, I have taken note of the Council's reasons for refusal. These are quite specific and relevant to the application, as my decision reflects. The wording of the reasons for refusal are sufficiently clear and precise in identifying the issues to determine the appeal. In the Officer's Report the Council has also set out the development plan policies with which they consider the proposal conflicts. It will be seen from my decision that these reasons, when considered with the officer report, have broadly been substantiated. The application formed a new planning application and the scheme that is the subject of this appeal, whilst similar to the initial application, was not identical.
5. Whilst the issue of residential amenity was not considered as unacceptable in the initial application, such that it constituted a reason for refusal, the altered layout changes the relationship between the static caravans, such that two are positioned end on to each other in close proximity. Whilst it will be seen that I do not agree with the Council that, in this particular case, this would undermine the living conditions of future occupiers to such a degree as to be unacceptable, this justifies the Council raising such concerns due to the changes in the layout. Further, the

Maidstone Borough Council Local Plan Review 2021-2038 was only adopted in March 2024. This plan introduced new policies that were not in the development plan at the time of determining the initial application. Development Plan policies become effective at the time of the adoption of the plan. Thus, the policy background had changed between the two applications and the Council was entitled to reflect this in their decision when determining the application.

6. Having regard to the matter of the setting of the LB, whilst the layout of the site had changed, and the site frontage had been enlarged, its position, point of access and basic nature are similar. Indeed, the current application has moved the caravans further back from the road and away from the access, thus reducing their prominence in views from the road. Any harm to the setting of the LB would have been apparent at the time of the initial application, yet the Council did not refuse the proposal on that basis. I find, therefore that the Council did not act consistently in this regard when determining the two applications.
7. The Council, in the Officers Report, explains its concerns regarding the setting of the LB and I am satisfied that it has provided sufficient evidence in that report to explain and justify its concerns.
8. Similarly, the Council has, in their Officer's Report, substantiated its concerns relating to the effect of the change of use on the character and appearance of the site and the surrounding area.
9. It is for the decision maker to determine what importance to allocate the matters that they consider material in determining planning applications and, from the reasoning set out in the Officer's Report, I find that the Council has done so to a satisfactory degree.

Conclusion

10. I have found that the Council was inconsistent in its consideration of the matter of the setting of the LB when considering the two separate applications, which amounts to unreasonable behaviour.
11. However, even had the Council acted with consistency when dealing with that matter, the appeal would not have been avoided and the appellants would still have incurred the cost of appeal. Given that I have found, in my appeal decision, that the proposal would result in material harm to the setting of the LB, the logical conclusion is that a consistent approach by the council would have nonetheless resulted in refusal of planning permission in both cases.
12. However, in failing to identify this matter in their refusal of the initial application, the appellants lost the opportunity to address it in their later application and incurred costs in regard to the preparation of evidence on that matter in the appeal before me. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the matter of the setting of the LB, is justified.

Costs Order

13. 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 Maidstone Borough Council shall pay to Mr G Fuller the costs of the appeal proceedings

described in the heading of this decision, limited to those costs incurred in contesting those parts of the Council's third reason for refusal which concerned alleged issues of adverse effect on the setting of the LB.

14. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

I A Dyer

INSPECTOR