Costs Decision

Inquiry held on 29-30 April & 1 May 2025

Site visit made on 29 April 2025

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2025

Costs application in relation to Appeal Ref: APP/B0230/C/24/3354644
Land at Wells Court, 106-108 Wellington Street, Luton, Bedfordshire LU1 5AF

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Luton Borough Council for a partial award of costs against Sewardstone Park Limited.
- The inquiry was in connection with an appeal against an enforcement notice alleging The change of use of the Land from an office building to 14 self-contained residential units including a five bedroom unit of multiple occupation.

Decision

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

Reasons

The basis of the application for costs

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. There are 3 strands to the application. First, it is said that ground (c) had no prospect of success and that the late withdrawal of that ground was unreasonable; second, that the late request to add ground (a) was unreasonable; and third, that the appellant's approach to the appeal resulted in the production of an additional statement, which caused the Council to incur additional costs.

The late withdrawal of ground (c)

4. It is now common ground between the parties that the ground (c) appeal could not have succeeded. The Council is critical of the fact that it was only withdrawn when proofs of evidence were exchanged on 1 April 2025, 4 weeks before the inquiry opened, at which point the Council had already incurred the expense of preparing its case on that ground. It is also said that, even at the inquiry, the appellant was required to confirm the position due to a prior lack of clarity. The Council therefore seeks all its costs of responding to the Ground (c) appeal.

5. The appellant's ground (c) case was that the site benefitted from Class O permitted development rights and prior approval. However, it is now agreed that, since one of the units involved external construction works, it could not have benefitted from Class O rights. This was pointed out to the appellant in the Council's statement,

which was sent to the appellant's agent on 31 December 2024. The PPG advises that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.

6. Even allowing for some time to absorb the content of the Council's statement, it should have been clear to the appellant long before the exchange of proofs of evidence on 1 April that Ground (c) could not succeed. If the appellant had acted on that promptly and informed the Council that it did not intend to pursue ground (c), there would have been no need for the Council to address the matter in its evidence for the inquiry. In the event, the Council officer's proof of evidence included a section addressing ground (c).

7. I am not persuaded that there was any lack of clarity regarding the fact that ground (c) was withdrawn on 1 April, and so any costs the Council may have occurred after that point are not eligible. Nor am I persuaded that the flaw in the ground (c) case was so obvious that it was unreasonable for the appellant to appeal on that ground initially. However, once the Council had addressed the point in its statement, the appellant should have withdrawn that ground promptly. Failing to do so was unreasonable and caused the Council expense in addressing ground (c) in its evidence for the inquiry. To that extent, the conditions for a partial award of costs exist.

Ground (a)

8. The request to add ground (a) led to discussion of the matter at the Case Management Conference (CMC) and some email exchanges. At the same time, I also considered the procedure and concluded that grounds (a), (f) and (g) could proceed on the basis of written representations.

9. However, I am not persuaded that the appellant's request was unreasonable. It was made soon after the appeal was made, apparently as a result of advice received from a new agent. The appellant could have sought appropriate professional advice before the appeal was made, which might perhaps have led to a ground (a) appeal at the outset. Even so, while the failure to appeal on ground (a) initially may have been a mistake, that does not make it unreasonable. Planning appeals can be complex and it is common for procedural matters and matters relating to the parties' cases to be resolved in the run up to an inquiry and at the CMC. The decision to allow ground (a) to proceed rested with me and simply making the request was not an unreasonable action on the appellant's part.

The appeal statements

10. The Council argues that the way the appellant conducted the appeal led to the generation of two separate statements of case, increasing the costs of the Council in having to respond to both.

11. The appeal was made on 29 October 2024. The appeal form was supplemented with a separate document setting out the grounds of appeal. A start letter for the appeal set out the timetable for the submission of documents. This included a requirement for appeal statements to be sent by 23 December 2024. Both parties provided their statements on 20 December, in accordance with the timetable.

12. There was no unreasonable behaviour in any of those actions; the appellant was simply following the requirement to set out its grounds of appeal when the appeal was made and to submit a statement in accordance with the prescribed timetable.

Conclusion

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the costs of the Council addressing ground (c) in the evidence for the inquiry following the exchange of statements, and a partial award of costs is therefore warranted.

Costs Order

14. 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 Sewardstone Park Limited shall pay to Luton Borough Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing ground (c) during the period between the exchange of appeal statements on 31 December 2024 and the withdrawal of ground (c) on 1 April 2025; such costs to be assessed in the Senior Courts Costs Office if not agreed.

15. The applicant is now invited to submit to Sewardstone Park Limited, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Peter Willows

INSPECTOR