The Planning Inspectorate

Costs Decision

Site visit made on 24 June 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2021

Costs application in relation to Appeal Ref: APP/A2525/X/20/3249073 Woodlands Caravan Park, Moulton Eaugate, Spalding, Lincs PE12 0SX

- 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 Tom Smith for a full award of costs against South Holland District Council.
- The appeal was against the refusal of a certificate of lawful use or development for use of land as residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans.

Decision: the application is granted and an award of costs is made in the terms set out in the Costs Order below

Reasons

1. The Planning Practice Guidance 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 Planning Practice Guidance 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 Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against a Local Planning Authority. These examples include acting contrary to, or not following, well-established case law: relying on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis: failure to produce evidence to substantiate each reason for refusal on appeal: and not reviewing their case promptly following the lodging of an appeal against refusal of planning permission as part of sensible on-going case management.

2. The essence of the appellant's application for costs is that the officer report, and nothing since, in any way justifies the decision to refuse the application. The appellant contends that the Council declined to seek proper legal advice, as may have been reasonably expected in cases such as this where the interpretation of primary legislation and case law lie at the heart of the matter. Relevant cases were not properly appraised in the first instance or properly reviewed on receipt of the appeal. It was self-evident that the application had been revised following the refusal of an earlier submission but this factor was not only set aside but was "camouflaged" by misrepresenting what was being put forward. The appellant contends that this was unreasonable behaviour, and caused him unnecessary and wasted expense in submitting an appeal which should not have been necessary at all.

3. My starting point is the appellant's contention that the application had been revised following the refusal of an earlier submission but that this fact was not only set aside but was somehow "camouflaged" by the Council. That is patently the case. The description of the development applied for could not have been clearer. It specifically excluded the caravan previously occupied by the original applicant: that much was clear from words captured by parenthesis. The reason for that was obvious too: had the caravan previously occupied by the original applicant not been removed from equation, the use proposed could not have been lawful. It would have been caught by condition 1 imposed upon the planning permission in September 1981 (Council Ref: H23/628/81/1271).

4. For some reason, the Council took it upon itself to unilaterally and inexplicably amend the description of the development applied for by including the words "resubmission of H23-0736-19". That was clearly not the case. It differed from the previous submission in one, but fundamental, way: the aforementioned exclusion of the caravan previously occupied by the original applicant. It seems to me that this one error sent the Council down entirely the wrong path in its consideration of the application.

5. It is evident from the Council's Officer Report that advice was sought from its own Legal Services team. Contrary the assertion made by the appellant, the Council therefore cannot be criticised for failing to seek proper legal advice. But the advice received perpetuates the error highlighted above, in that it states that nothing had changed in the intervening period (from the submission of the previous application) that would justify the Council changing its position. For reasons set out above, that was manifestly not the case.

6. It is reasonable to conclude that, in seeking advice from its Legal Services team, the latter was provided with all the supporting material submitted with the application. This included a number of appeal decisions in which the relevant case law was rehearsed. More importantly, that information also included a full transcript of the judgment in the case of *Cotswold Grange Country Park LLP* [2014] EWHC 1138 (Admin), in which the High Court held that the description of development on a planning permission is a different thing from a condition restricting the numbers of caravans on the site. The judgment also cited the well-known case of *I'm Your Man Limited v Secretary of State for the Environment & North Somerset DC* [1999] 4 PLR 017, in which it was held that imitations cannot be effected by mere restrictions in the description of the development in the grant, but only by the imposition of conditions.

7. It is again reasonable to conclude that the Council's Legal Services team is familiar with the legal principles enshrined within *I'm Your Man* and *Cotswold Grange Country Park.* But for whatever reason the Legal Services team failed to engage with those legal principles in its advice on the application. This is not a situation where the Council properly engaged with the relevant case law but arrived at a different professional interpretation to the appellant. That would have been entirely reasonable. In this case, there is no evidence that the Council followed well-established case law. That is unreasonable behaviour as set out in the Planning Practice Guidance.

8. That unreasonable behaviour was compounded by a failure to review its position once the appeal was submitted. The submission of the appeal

presented the Council with a second bite of the cherry. This time armed with the appellant's Statement of Case for the appeal. Not only did that Statement of Case put beyond doubt any question over the exact terms of the application the subject to the appeal, the Addendum set out the appellant's application for costs. It would, in my view, have been both prudent and sensible on-going case management for the Council to have reviewed its case at that point: the warning signs were there for those who cared to look. That the Council failed to review its case amounts to unreasonable behaviour for the purposes of the Planning Practice Guidance.

9. The Planning Practice Guidance indicates that 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 (emphasis added). In this case, the Council has acted unreasonably for the reasons set out above. In so doing, it caused the appellant to incur wasted and unnecessary expense in submitting an appeal would not have been necessary if the Council had followed well-established case law and/or had reviewed its position promptly. I am therefore satisfied that a full award of costs is justified.

Costs Order

10. In exercise of the powers under sections 195, 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Holland District Council shall pay to Mr Tom Smith, the full costs of the appeal proceedings described in the heading of this decision.

11. The applicant is now invited to submit to South Holland District 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 in enclosed.

Paul Freer
INSPECTOR