
Costs Decision

Hearing Held on 12 March 2019

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 9 April 2019

Costs application in relation to Appeal Ref: APP/U2235/W/18/3197191 Mapplehurst Paddock, Frittenden Road, Staplehurst, Tonbridge, Kent TN12 ODL

- 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 John Lee for a full award of costs against Maidstone Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for permanent use of land as a home for a gypsy family, with a mobile home, touring caravan, dayroom and stables without complying with a condition attached to planning permission Ref MA/12/1793, dated 19 September 2013.
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Decision

1. The claim for Costs is allowed.

The submissions for the appellant

2. The Council has been unreasonable in relying on the cumulative effects of the proposal, along with unlawful development nearby, when Policy DM 15 refers to other lawful development. The Council have also maintained an objection to the appeal proposal when permanent and non-personal permissions have been granted on sites nearby. It should have been clear that the Council had no reasonable prospect of success at the appeal.
3. The Council have acknowledged that the current occupation of the site could lawfully continue for many years to come, irrespective of the outcome of the appeal. Furthermore, the Council's stated aim to hope for the reinstatement of the site to some rural form would not be achieved as they have not imposed any condition on the original permission which requires it. Their position is unrealistic and unreasonable.

The response by the Council

4. The Council have provided evidence in the statement and during discussions at the Hearing to support its case. The issue of the effect on the character of the area is highly subjective and the Council has offered its legitimate view.
5. The Council accept that the site can be occupied for some time but the prospect of reinstatement is a real one.

6. With reference to the 2 recently allowed schemes nearby, this reinforces the Council's case in relation to cumulative effects. The reference to unlawful developments in the reasons for refusal was legitimate as they were there and had an effect. The Council's case is a legitimate one and is reasonable.

Reasons

7. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and 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.
8. The terms of Policy DM 15 are clear; in relation to the cumulative effects of development it states that this relates to "...the landscape impact arising as a result of the development in combination with existing lawful caravans...". Not only is this abundantly clear but it is entirely logical as the future of any unlawful development would be uncertain and there is a possibility that unlawful development could be absent within a short time period. Therefore, I agree that to take specific account of unlawful development in this case is clearly unreasonable.
9. In relation to the nearby development that then became lawful as a result of appeals (Refs APP/U2235/W/17/3177144 and 3177145) the matter of the cumulative effects on the locality were considered. This apparently also took account of the presence of the existing development at the appeal site. Within the appeal decision the Inspector refers to the Council accepting that the sites in question (just a very short distance to the south) did not make any contribution to the landscape qualities of the surrounding wider area. In addition, the Inspector concluded that the sites in question at that time cannot be viewed as having the level of sensitivity attributable to other parts of the locally designated landscape. It was stated further in the decision by the Inspector that the combined effects are not significantly harmful. The site which is the subject of the appeal now before me is referred to as a lawful site to the north. Therefore, even with the prospect of the continued occupation of the site which I am now considering, my fellow Inspector determined that the cumulative effects of the development were acceptable.
10. In my view, the Council should have had regard to this in their consideration of the current appeal. Even though the appeals relating to the other sites post-dated the Council's refusal of the current scheme, they had ample opportunity to re-visit their position, which they did not do. In my judgement, if they had done so the only reasonable outcome would have been to discontinue their resistance to the appeal scheme as it would have been clear that the cumulative effects had already been judged to be acceptable within the context of the other appeals.
11. The fact that that the appeal site could be occupied in its current state regardless of the outcome of the appeal for several decades to come provides considerable additional weight to the appellant's position.
12. For the above reasons, I consider that the Council has acted unreasonably and has sought to prevent development which should have been allowed. Therefore, in respect of the matters identified above, their actions have meant

that the appellant has incurred unnecessary expense and an award of costs 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 pay to Mr John Lee, the costs of the appeal proceedings described in the heading of this decision.
14. The applicant is now invited to submit to Maidstone Borough 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.

S T Wood

INSPECTOR