Planning Inspectorate

Costs Decision

Site visit made on 12 November 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 19 DECEMBER 2024

Costs application in relation to Appeal Ref: APP/B1605/X/23/3331569
The Forge, Branch Road, The Reddings, CHELTENHAM, GL51 6RH

- 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 The Forge Residential Park Ltd for a full award of costs against Cheltenham Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development for Use of land as a caravan site without restriction as to layout or numbers of caravans.

Decision

1. The application for an award of costs is 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 alleges that the Council has: (i) Not provided a substantive explanation for its refusal; (ii) acted contrary to established case law; (iii) relied upon unreasonable refusal reasons; and (iv) acted unreasonably in not considering use of its powers under s191(4) of the 1990 Act[1] to vary the description of the existing lawful use sought and grant a certificate on a modified basis.

4. As to the first allegation, the Council refers to the fact that the lawful development certificate (LDC) application which was the subject of this appeal was a resubmission of a previous LDC application for the same use which was refused and that the appellant did not take the opportunity to revise the application/provide additional details of the use such as to enable the grant of a certificate. In my view, whilst the appellant did not revise the wording of the current use or provide additional details, the appellant explained very clearly, with reference to the 2023 LDC[2] and relevant case law as to why this was not necessary.

5. As outlined in my appeal decision, the appellant has not used the LDC application procedure to seek legal advice on the effect of the 2023 LDC but rather to seek confirmation as to whether the current use as described in the application was lawful in the context of the 2023 LDC and case law cited.

[1] Town and Country Planning Act 1990
[2] Ref: 23/00443/CLEUD

6. The Council has not substantively addressed these submissions or case law, relying on the assertion that the LDC application was invalidly made under s191 (and should instead have been made under s192 as a proposed use) as a basis for deeming these matters to be irrelevant. Whilst the Government's Planning Practice Guidance ('PPG') indicates that '*Without sufficient or precise information, a local planning authority may be justified in refusing a certificate',* this does not prescribe the amount of detail or information that will be required in any given situation.

7. The appellant outlined in detail in this case by reference to the 2023 LDC and relevant case law why no further information was necessary in describing the existing use but the Council has not properly engaged with these points. Plainly it is not unreasonable of itself for an appeal party to not submit a statement but in this case the Officer Report has not dealt with numerous submissions made by the appellant.

8. As regards the Council's approach to established case law, this appears to have been both inconsistent and lacking in detailed analysis. The Officer Report in respect of the previously refused LDC application[3] appeared to be seeking to rely on the *Childs*[4] case whereas the Council appears in costs representations to indicate that this is irrelevant, whilst also not engaging with the appellant's submissions related to why this case is distinguishable from the circumstances in this case in any event.

9. The Council deemed all other case law referenced by the appellant to be irrelevant on the basis that the LDC application was invalidly made under s191. Whilst I would not expect an appeal party to need to engage with case law that is irrelevant, bearing in mind that the Council failed to properly deal with the appellant's submissions that the LDC application was properly made under s191, it was unreasonable for the Council to invoke this reason as a basis to not deal with case law submissions which were otherwise relevant.

10. The PPG acknowledges that '*where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs*' and the fact that I have not agreed with the Council's approach to either the procedural or substantive positions on the appeal does not render the Council's behaviour unreasonable of itself. However, the Council has not made a full response to the appellant's submissions as to the validity of the application being made under s191 and simultaneously has used the allegation of invalidity as a basis for not responding to case law submissions made.

11. The Council has therefore acted unreasonably in failing to properly substantiate its reasons for refusal on appeal, failing to follow established case law and relying upon unreasonable reasons for refusal. Whilst the appellant has not specifically outlined how unnecessary expense has occurred as a result of these aspects of unreasonable behaviour, it is an obvious inference that the entire appeal could have been avoided. Given that I have found in favour of the appellant in respect of the validity of the application and the substantive merits of the appeal (albeit that I have granted a certificate on a modified basis), it follows that the appeal could have been avoided if the Council had acted reasonably in the respects outlined.

[3] 23/00936/CLEUD
[4] *R (oao) John Childs)* v *First Secretary of State and Test Valley Borough Council* [2005] EWHC 2368

12. As regards the Council's powers under s191(4), the Council has again referenced the invalidity of the application being made under s191 as a basis for not considering the use of this power and as outlined above, the Council has acted unreasonably in not properly addressing the appellant's validity submissions. It is not clear though from the appellant's submissions as to how this omission specifically has led to wasted expense.

13. Unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated as detailed above and a full award of costs is justified.

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 Cheltenham Borough Council shall pay to The Forge Residential Park Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

    The applicant is now invited to submit to Cheltenham 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.

V Bond

INSPECTOR