

Local Government Act 1972 - Section 250(5)
Town and Country Planning Act 1990
Appeal by Elmhurst Park Ltd
Site Address: Elmhurst Caravan Park, Second Avenue, Eastchurch, ME12 4ER

YOUR APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities to decide your application for an award of costs dated 6 December 2022 against Elmhurst Park Ltd (the appellant). The appeal, made on 25 May 2021, was against the failure of Swale Borough Council (the Council) to give notice of its decision within the appropriate period on an application for a lawful use certificate for the use of the land for the siting of static caravans for the purposes of human habitation. The appeal was withdrawn on 3 November 2022 and the Inspectorate confirmed the withdrawal on 10 November 2022.

DECISION

2. The application is allowed in the terms set out below.

Basis for determining the costs application

3. Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. PPG goes on to say that if an appeal is withdrawn without any material change in the planning authority's case, or any other material change in circumstances relevant to the planning issues arising in the appeal, an award of costs may be made against the appellant if the claiming party can show that they have incurred wasted expense as a result.

Conclusions

4. The Inspectorate's 10 September 2021 letter drew the appellant's attention to the costs guidance which could be found on GOV.UK. The letter warned the appellant that it was at risk of costs being awarded against it should the appeal be withdrawn at any time in the proceedings without good reason.
5. The appellant's decision to appoint a new agent as a result of the appeal site changing ownership and Elmhurst Park Ltd being acquired by Royale Parks Ltd was a matter of choice; it was not done following a material change in circumstances relevant to the planning issues arising in the appeal and is a separate matter to the development the subject of the appeal. The appellant must have known that there was always the risk that, in replacing the agent less than 2 weeks before the hearing date, the new agent would not have enough time to prepare for the hearing and the appeal would be withdrawn as a result.
6. The appellant's decision to change its agent so late in the appeal is not a sound reason for withdrawing the appeal and the appellant has not identified any other relevant material change in circumstances that might justify the withdrawal. The withdrawal of the appeal was unreasonable and the Secretary of State therefore concludes that the Council has, in preparing its appeal case, incurred wasted expense. A full award of the Council's costs will therefore be made.

COSTS ORDER

7. Accordingly, the Secretary of State for Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 174 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, HEREBY ORDERS that Elmhurst Park Ltd shall pay to Swale Borough Council its costs of the planning appeal proceedings before the Secretary of State, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concern an appeal described in paragraph 1 of this letter.
8. The Council may now submit details of those costs to Elmhurst Park Ltd with a view to reaching an agreement on the amount.
9. A copy of this letter has been sent to the appellant.

Yours sincerely

Richard Holland

Authorised by the Secretary of State to sign in that behalf