
Costs Decision

Hearing held on 25 October 2016

Site visit made on 25 October 2016

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 16 January 2017

Costs application in relation to Appeal Ref: APP/L2630/W/16/3155500 & APP/L2630/C/15/3140507

Hope Valley, Low Common Road, Forncett St.Peter, Norwich, NR16 1ILP.

- 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 A Price for a full award of costs against South Norfolk District Council.
 - The hearing was in connection with an appeal against the refusal of an application for, in summary, a single gypsy and traveller pitch and the issue of an enforcement notice requiring the cessation of this use.
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Decision

1. The application for an award of costs is refused.

The submissions for Mr Price

2. The application for costs was made in writing and expanded on orally at the Hearing. In essence the appellant submits that the Council gave inadequate consideration to the material aspects of the family's Article 8 Human Rights or the best interests of the children, which are recognised in law and case law as primary material considerations. It is said that the Council also failed to consider the planning merits of the case flexibly, as required by Policy DM3.3, given that the Council cannot demonstrate a five year supply of deliverable new gypsy and traveller sites at the moment. If the application had been considered properly, the decision may not have been to refuse permission and the appeals would not have been necessary. This is said to constitute unreasonable behaviour and resulted in the appellant having to incur the costs of the appeals.

The response by the Council

3. The Council points to the parts of the delegated report which refer to the appellant's and family's personal circumstances and to the best interests of the children and says that these factors were properly taken into consideration. The Council also refers to the period for compliance specified in the enforcement notice as an indication that the decision was proportionate as the human rights were balanced with the nature of the breach

Reasons

4. In the appeals I concluded that planning permission should be granted for a limited period but I upheld the notice because on the sole ground of appeal (g),
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I concluded that the period for compliance at one year, was not inadequate. In the planning decision I felt that significant weight had to be given to the lack of positive provision for gypsy and traveller sites in the development plan and the lack of five year supply of sites in accordance with relevant government guidance.

5. Although I reached a different conclusion to the Council on the planning merits of Appeal A, it is clear to me that the Council properly took into consideration the personal circumstances of the appellant and the best interests the children as other material considerations. The Council placed lesser weight on these factors than the provisions of the development plan, even with relevant policy applied flexibly, and the balance of government guidance. However, it is established case law that the weight to be applied to a specific relevant factor is a matter for the decision maker. In this case that was the professional judgement of the planning officer concerned.
6. The consideration of human rights is also evident in the period for compliance specified in the enforcement notice. A period of one year in which to cease the use and vacant the site is a relatively long period to remedy the alleged breach of planning control, compared to non-residential occupation and without children, and takes into account the human rights of the occupiers living on the site.
7. Overall, I am satisfied that Council's decision to refuse planning permission and issue the enforcement notice did not constitute unreasonable behaviour and the costs incurred by the appellant in the appeals were the normal costs arising when the right of appeal is exercised including in respect of unauthorised development.

Conclusions

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

David Murray

INSPECTOR