
Costs Decision

Hearing opened on 10 February 2016

Site visit made on 15 & 21 March 2016

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 25 January 2017

Costs application in relation to Appeal Ref: APP/R0660/W/15/3131662 The former Hack Green RAF Camp, Crisham Avenue, Hack Green, Austerson, Nantwich, Cheshire, CW5 8AS

- 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 The Save Hack Green Campaign Group for a partial award of costs against The Hack Green Group.
 - The hearing was in connection with an appeal against the refusal of planning permission for development described as 'the change of use of land to provide 9 yards for 10 travelling showpeople's families, the formation of roads and hardsurfacing'.
 - The hearing was conducted over three days: 10 and 11 February and 14 March 2016.
-

Decision

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

Procedural matter

2. For the purposes of clarity, the proposal is more appropriately described as the change of use of land to provide 9 plots for 10 travelling showpeople's families, the formation of roads and hardsurfacing, and I have considered the appeal on this basis.

The submissions for the Save Hack Green Campaign Group (SHGCG)

3. The costs application was made in writing (Document O14). The gist of further representations made at the inquiry is as follows. The Appellant's statement referred to personal need, and it was incumbent on The Hack Green Group to provide suitable and accurate evidence. It was apparent on the second day that there were inaccuracies in the information submitted. All the parties involved in the appeal had known that it would proceed by means of a hearing.

The response by The Hack Green Group

4. Although the Inspector had asked for information on personal need and circumstances, when the application had been made it had not been reliant on this matter. A need for 13 plots had been accepted in Cheshire East, and there was no other site available. This starting point should not be overlooked because of the time spent on personal need and circumstances. The promoter of a conventional residential development would not be expected to provide details of prospective occupiers, and travelling showpeople should be treated in the same way.

5. The Appellant has responded to a series of criticisms from local residents, but they have come back with further queries. Some of these have not been relevant: for example questions about houses owned by a member of the Hack Green Group. It was not unusual for evidence on personal need and circumstances in traveller cases to be given orally. The SHGCG had argued that the appeal should be heard at an inquiry: if this had been the case it would have taken longer than the hearing. There had been no unreasonable behaviour on the part of the Appellant.

Reasons

6. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 16-056 of the PPG is also relevant and states: *It is not anticipated that awards of costs will be made in favour of, or against, other interested parties¹, other than in exceptional circumstances.*
7. Two days had been allocated for the hearing, and the SHGCG argued that the pursuit of information from the Appellant concerning the prospective occupants had caused it to extend into a third day. It is true that the SHGCG had argued that the appeal should proceed by means of an inquiry (Document O1), and it is likely that this would have taken longer than the hearing. However the main parties were informed on 6 November 2015 that a hearing would take place, and it is reasonable to assume that preparations thereafter would have been made on that basis.
8. The Appellant emphasised the need for 13 additional plots in the Borough, identified in the Cheshire Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (although the approach to the calculation of need has been challenged by the SHGCG), and the lack of any alternative site. I agree with the Appellant that these matters were material considerations which supported the proposed development, but they were not determinative of the appeal.
9. Personal need and circumstances were part of the Appellant's case at the outset, being referred to in an appendix to the design and access statement accompanying the planning application. They were also material considerations in this appeal. Additional information was subsequently provided with the statement of case and then with the supplementary statement submitted in advance of the hearing. Nevertheless, when the hearing opened, information from the Appellant concerning fairs attended and the prospective occupants' existing living arrangements was incomplete, and there was little information provided about their vehicles, caravans and fairground equipment.
10. During the first day of the hearing some additional evidence about the prospective occupants was given on behalf of the Appellant, essentially in relation to the discussions on *character and appearance* and *living conditions*. This oral evidence did not materially prolong the first day. On the second day, the matters for discussion included personal need and circumstances. Additional evidence was given orally on behalf of the Appellant, providing details of fairs attended, vehicles, caravans and fairground equipment, and the existing living arrangements of five of the ten families in The Hack Green

¹ Interested parties who are not Rule 6 parties under the inquiry procedure rules.

Group. It was not possible to conclude the hearing on the second day, and it was adjourned to a later date for a third day.

11. Due to certain inconsistencies which had emerged in the evidence and the incomplete documentation on personal matters, I asked the Appellant to submit, during the adjournment, a revised schedule of caravans, vehicles and fairground equipment and revised details of the intended occupants of the site. These documents (A10 & A11) were submitted before the hearing resumed.
12. On the third day, the hearing resumed at 1000 hours and was closed at about 1750 hours. In addition to considering the remaining five families, the personal need and circumstances of the families discussed on the second day, with the exception of John Collins Junior, was revisited. Discussion on these matters, even with the availability of the Appellant's additional documents, occupied a considerable part of the day, extending into the afternoon. Dealing with matters of detail in respect of nine families was inevitably a lengthy process. The SHGCG participated fully in the discussion on personal need and circumstances. In doing so it raised several queries about matters which, although associated with prospective occupants or their relatives, turned out not to have implications for the use of the appeal site. Queries were raised about fairs and equipment associated with the relative of a prospective occupant (Anthony Cubbins Junior, the son of Tony & Gaynor Cubbins of family vii), about the equipment used in other business ventures which would continue to be stored elsewhere (Read Holland (ii), Gary-Michael Leach (vii)), and about the hiring of fairground equipment (Gary-Michael Leach (vii), George & Lyne Simons (x)) which, the Appellant explained, includes advertising on behalf of other showpeople. All these matters took time to address.
13. I acknowledge that it is not unusual for evidence on personal need and circumstances in traveller cases to be given orally, but in this case the Appellant was also able to produce documentary evidence. Having regard to paragraph 16-052 of PPG, it was unreasonable of the Appellant not to provide the additional information submitted during the adjournment in advance of the hearing. On the second day of the hearing, the original session on personal need and circumstances lasted for about four hours. Bearing in mind the significantly greater length of day three, I am quite clear that, even if the documentation submitted by the Appellant had been previously available, the hearing would not have concluded on 11 February. Moreover, on day three there was no further discussion concerning John Collins Junior, and personal need and circumstances of the other four families previously considered were dealt with relatively briefly. Taking these factors into account, I consider that the hearing would have only closed about two hours earlier if the session on personal need and circumstances had proceeded with relevant documentation in place. The SHGCG was represented by Counsel throughout the hearing, and its application seeks the cost of Counsel's fees for the third day of the hearing. For the reasons given above, I consider that the hearing would have required a third day in any event, but the additional time taken on that day caused the SHGCG unnecessary expense.

Conclusions

14. I have found that the Appellant behaved unreasonably in the late submission of additional information, and that this caused the SHGCG unnecessary expense. I am mindful of the guidance in PPG which indicates that an award of costs

should only be made to interested parties in exceptional circumstances². That indicates that, where the application by the SHGCG is concerned, it is not sufficient to identify that unnecessary expense has been incurred as a consequence of unreasonable behaviour. The Planning Inspectorate's *Procedural Guide - Planning Appeals – England* explains the hearings procedure in Annex E. Paragraph E.1.2 states that: *Statutory parties and interested people may be represented by an 'advocate' but this is not essential. Any advocate may be legally qualified but this also is not essential.* The SHGCG chose to be represented by Counsel at the hearing. It was also represented by two members who demonstrated an ability to present the Campaign Group's concerns about the appeal proposal. The cost of legal representation was not a prerequisite for the effective participation of SHGCG in the hearing. I conclude that the exceptional circumstances to justify an award of costs to an interested party do not exist in this case.

Richard Clegg

INSPECTOR

² The reference in paragraph 16-056 of PPG is to interested parties other than Rule 6 parties.