The Planning Inspectorate

Costs Decision

Hearing held on 9 August & 21 September 2016

Site visit made on 21 September 2016

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

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

Decision date: 10 March 2017

Costs application in relation to Appeal Ref: APP/L1765/W/15/3141334
Barn Farm Caravan Park, The Lakes, Swanmore, Hampshire S032 2PR

- 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 H Hughes for a full award of costs against Winchester City Council.
- The hearing was in connection with an appeal against the grant subject to conditions of a planning permission for variation of condition 1 (occupancy condition) and removal of condition no.3 (occupancy condition and expiry of permitted use by 18 October 2015) of planning permission 12/02253/FUL (Land opposite Belmont Farm).

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr H Hughes

2. The original hearing was adjourned because the Council were unable to satisfy the Inspector that a notification of the event to interested parties had taken place. This procedural failing is clearly unreasonable behaviour as set out in Planning Practice Guidance on costs. Consequently, the applicant has been put to the unnecessary cost of attending and therefore seeks the attendance costs for that day.

3. In relation to conditions 1 & 3, the Council has failed to undertake a planning balance and therefore give weight to, the standard material considerations in gypsy and traveller cases of the need for additional gypsy and traveller accommodation, the lack of alternative sites, the absence of a five year land supply and on-going failure of policy. It has not considered the presumption in favour of sustainable development. Therefore, it has not carried out a proper balancing act as required under s38(6). Their failure to consider relevant material considerations at application stage and to promptly review their case at appeal stage is unreasonable behaviour. Furthermore, the Council has argued that a permanent planning permission would prejudice the outcome of the DPD process contrary to the advice within Planning Practice Guidance.

4. Furthermore in granting planning permission, the Council imposed conditions that did not meet the tests set out in paragraph 203 of National Planning Policy Framework. If the claim for a full award is rejected, then a claim for a partial award in relation to the substantive issues on each of the individual conditions is made.

The response by Winchester City Council

5. The approach in granting a temporary planning permission is sound, reasonable and appropriate in light of development plan policies and emerging planning policies. The Council's case on the merits of a temporary planning permission was that this would enable a proper evaluation of this site and other potential sites under the DPD process. Repeatedly granting temporary planning permission has ensured this.

6. Contrary to the applicant's views, the Council has undertaken a balancing exercise. The fact that the outcome of that assessment is that a further temporary planning permission has been granted does not mean all relevant considerations have been taken into account. It has been accepted that there is no 5 year supply of pitches and no policy allocations to satisfy unmet need. However the Council has given more weight to the adopted gap policy and a temporary planning permission allows a significant time frame to the adoption of the Site Allocations DPD and time period beyond to respond to whatever the outcome of that process is. It strongly refutes the applicant's arguments that its case is based on prematurity. Turning to the planning conditions, all planning conditions serve a proper function and comply with relevant tests.

Reasons

7. The Planning Practice Guidance 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.

8. There has been a procedural error because inadequate publicity was given to those wishing to be present at the hearing in August 2016. This unreasonable behaviour has resulted in unnecessary expense for the applicant.

9. The Council has set out its case on the effect of the proposal on the character and appearance of the area and the location of the development. It has confirmed that the proposal is contrary to development plan policies regarding the location of development in the open countryside and it has provided evidence on unmet need and 5 year supply of gypsy and traveller pitches. In this regard, it has provided some support for its figures for need in response to the applicant's figures. In terms of personal circumstances, it has clearly taken the personal circumstances of the Appellant and the occupiers of the site into account when weighing the balance and coming to the conclusion that a personal planning permission was justified.

10. One of the Council's arguments is that a temporary planning permission would allow an assessment of the appeal site against other sites when the Site Allocations DPD process is complete. However it has identified conflicts with the development plan policies under section 38(6). The documentation also indicates that the weight to be attributed to the gypsy status needs to be balanced against compliance with JCS policy CP5 and any harmful effects such as the impact on the countryside and transport. It is clear from the Council's arguments and evidence that Site Allocations DPD consideration was only one of a number of factors in coming to its decision in favour of a temporary and personal planning permission (conditions 1 and 3).

11. Turning to prematurity the Council has argued that the PPG indicates that the circumstances justifying such a position are not exclusively limited to the

situations identified within the PPG. Therefore, despite my findings on the merits of the temporary and personal planning conditions 1 and 3, I find that the Council has provided objective analysis to support its position. The Council treated the emerging DPD as a factor in its overall balance. Whilst I have concluded that the arguments of prematurity were not justified in this case I am satisfied that this was only one factor that the Council applied in coming to its overall conclusion. Therefore, the Council's assessment is not unreasonable. In any event even without the prematurity considerations, the Council could still have come to the same conclusion having regard to the other factors in the balancing exercise.

12. The remaining conditions cover substantive detailed matters. In my main decision, it is acknowledged that the proposal would result in some visual harm, albeit small. For these reasons, conditions 2 (pitch and caravan numbers, type of mobile home), 5 (commercial activity, vehicle numbers and weight) 7 (lighting) have been justified.

13. In respect of condition 6, the part of the condition requiring planning permission for future outbuildings/structures has not been justified. A case has been made to control the proliferation of moveable buildings and structures and having a public record of them on grounds of character and appearance. The Council has overall provided evidence to substantiate its stance on this condition 6, like it has done on conditions 2, 5 and 7.

14. In the case of condition 8 (sewage treatment plant), the condition would be difficult to enforce as it is worded. Nevertheless, the Council has identified the findings of drainage survey works for a planning application nearby and therefore provided evidence to justify its position. For condition 9 (no residential use of touring caravans), there are residential properties in the vicinity to justify concerns about noise and disturbance. Finally, I have found the Council's evidence persuasive in imposing condition 10 (Use of dayrooms for living accommodations) on grounds of character and appearance. Essentially, the arguments about the remainder of the conditions are matters of planning judgement and the imposition of those conditions in the form suggested by the Council does not amount to unreasonable behaviour of the type envisaged by the guidance.

15. In summary, a partial award is justified on the basis of procedural costs which should be limited to those of the applicant in preparing for, travelling and attendance for the August hearing. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

16. 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 Winchester City Council shall pay to Mr Henry Hughes, the costs of the appeal proceedings described in the heading of this decision limited to those costs as set out in this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. The applicant is now invited to submit to Winchester City Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathon Parsons

INSPECTOR