

## Costs Decision

Inquiry held on 28 February - 1 March 2017

Site visit made on 1 March 2017

**by H Baugh-Jones BA(Hons) DipLA MA CMLI**

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

**Decision date: 11 April 2017**

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### **Costs application in relation to Appeal Ref: APP/P1615/W/16/3155826 Sandyway Nurseries, Redmarley Road, Newent, Gloucestershire GL18 1DR**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Forest of Dean District Council for a partial award of costs against Sandyway Nurseries.
  - The inquiry was in connection with an appeal against the refusal of planning permission for use of land for the stationing of 23 mobile homes for occupation by persons employed in the locality in agriculture.
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### **Decision**

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

### **The submissions for Forest of Dean District Council**

2. The Council considers that the appellant was unreasonable to press on with the appeal for the following reasons:
  - the previous appeal<sup>1</sup> was dismissed, at least in part, as a result of the appellant having failed to demonstrate any specific need for seasonal accommodation at the Sandyway Nurseries site
  - the appellant was therefore effectively on notice that such a need would have to be demonstrated for any future application or appeal
  - that, in submitting the present application, the appellant sought to rely on the shortfall in provision at the Haygrove site identified by Haygrove as part of its own application
  - that shortfall in provision was subsequently provided for by the amended application which was then granted planning permission
3. The point at which the Haygrove application was approved is, in the Council's view, the point at which the appellant behaved unreasonably in continuing to progress the appeal. The appellant confirmed by email dated 17 October 2016 that the appeal would be pursued and it is from this point onwards that an award of costs is sought.

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<sup>1</sup> Linked appeals APP/P1615/C/14/2224532 and APP/P1615/A/14/2222169

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### **The response by Sandyway Nurseries**

4. The appellant argues that the Council has no case for an award of costs within the meaning of Planning Practice Guidance (PPG) and indeed that there is no reference made to PPG in the costs application.
5. The Council did not indicate that the planning application or the appeal had no prospect of success as a costs award is only sought from the point at which Haygrove was granted permission for the additional mobile Homes at Newtown Farm. This stance is supported by the quashing by the High Court of the Council's refusal to determine the planning application and thus that the Council has accepted the existence of a material change in circumstances since the previous appeal decision. The appellant also makes the following points:
  - the Council should not be allowed to rely on an unconscionable application that arose from the Council's suggestion that a further 9 mobile homes should be provided at Newtown Farm, when they were never requested by the appellant
  - in any case, there is ample justification for allowing the appeal regardless of Haygrove's increased accommodation provision so there is no straightforward comparison between the current appeal and the previous one with or without the additional 9 mobile homes
  - the Council's flawed approach to need from its reliance on replaced Planning Policy Statement 7 is a reason why it is not unreasonable for the appellant to pursue the appeal
  - the Council invited the increase in the number of mobile homes at Newtown Farm despite being aware of the application relating to those at Sandyway Nurseries.
  - based on the appellant's expert evidence, it is not unreasonable to place continued reliance on the benefits to Haygrove from the mobile homes at Sandyway Nurseries and that the matter is not so predetermined as the Council suggests
  - given the lack of landscape harm and the presumption in favour of sustainable development in the absence of specific development plan policies in relation to seasonal workers, it was reasonable to pursue the appeal
6. The appellant therefore submits that on the basis of the above, a clear conclusion cannot be drawn that the appeal should have been withdrawn.

### **Reasons**

7. The 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. Despite the lack of any reference to the PPG by the Council in this application, I have nonetheless taken it into account in reaching my decision.
8. The Council considers that there has been an absence of any identified need other than that within the Haygrove Operation throughout the application and appeal process. The Council's case in this application for costs is based heavily on the perceived requirement for the appellant to demonstrate need through

specific evidence for seasonal accommodation at the Sandyway site in light of the previous appeal decision.

9. PPG is clear that the type of behaviour that may give rise to a substantive award against an appellant includes where an appeal follows a recent appeal decision in respect of the same, or a very similar development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period<sup>2</sup>.
10. The previous appeal decision was issued on 21 April 2015 so almost two years have now elapsed. In the intervening period, the appellant has sought to justify the scheme with additional evidence in the form of the submitted Operational and Commercial Needs Statement and a Register of Occupation (the latter relating to mobile homes at Sandyway Nurseries). Whilst in my determination of the appeal, I did not find this evidence to provide a convincing demonstration of need, it nonetheless points to an attempt by the appellant to address the concerns of the previous Inspector.
11. The appellant also had further arguments relating to future growth in the need for workers, the benefits of offering a choice of accommodation and the Framework's presumption in favour of sustainable development. Although I did not allow the appeal, I am satisfied that the appellant had an arguable basis on which to pursue it.
12. In conclusion, I do not think that the appellant has behaved unreasonably. Accordingly, the application for an award of costs should not succeed.

*Hayden Baugh-Jones*

Inspector

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<sup>2</sup> Paragraph: 053 Reference ID: 16-053-20140306