

Costs Decision

Site visits made on 20 and 21 February 2017

by Richard Schofield BA(Hons) MA MRTPI

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

Decision date: 12 May 2017

Costs application in relation to Appeal Ref: APP/R0660/W/16/3150398 Land opposite Five Acres Farm, Cledford Lane, Middlewich CW10 0JS

- 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 Jerry Smith for a full award of costs against Cheshire East Council.
 - The appeal was made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The application sought planning permission for change of use of land to use as a residential caravan site for 3 gypsy families with a total of 6 caravans, including laying of hardstanding, improvement of existing access and erection of 2 amenity buildings without complying with a condition attached to planning permission Ref 10/0015C, dated 26 May 2010.
 - The condition in dispute was No 4, which states that *'There shall be no more than 3 pitches on the site. On each of the 3 pitches hereby approved no more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed at any time, of which only one caravan shall be a static caravan or residential mobile home'*.
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Decision

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

The submissions for Mr Jerry Smith

2. The application was made orally at the Hearing, with reference to the relevant sections of the Planning Practice Guidance (the Guidance). In short, it is alleged that:
 - a) the Council prevented or delayed development that should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - b) failed to produce evidence to substantiate its reason for refusal; and
 - c) made vague and generalised assertions about the proposal's impact, unsupported by any objective analysis.
 3. More specifically, in relation to these points respectively, it was alleged that
 - a) the proposal accords with the development plan and national policy, insofar as it is relevant, with particular regard to the brownfield land support offered by the Planning Policy for Traveller Sites. In relation to the policies cited in the
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decision notice, the Council was unable to suggest why Congleton Borough Local Plan First Review (the Local Plan) policy H8 was relevant to the appeal proposal or how the scheme conflicted with policy PS8;

- b) no evidence was provided to support the Council's view that the proposal would have an adverse effect on the character and appearance of the area; and
- c) the reason for refusal was itself vague and no evidence at all had been provided to demonstrate a material difference between the extant development on the site and what was being proposed.

The response by Cheshire East Council

- 4. The Council responded that the reason for refusal was made with reference to the development plan and that policy H8 is clear that proposals for gypsy and traveller sites should not prejudice other relevant local plan policies. It noted that it had put forward the case that the proposed additional development on the site would have an increased impact upon the surrounding open countryside.

Reasons

- 5. Paragraph 030 of the Guidance advises that costs may be awarded against a party who has behaved unreasonably and where this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
- 6. The Council's sole reason for refusal asserted that the additional caravans on the site '*would not preserve the openness of the open countryside or maintain and enhance its local character*'. It cited Local Plan policies PS8 and H8 in support of this.
- 7. Policy PS8 is a general restraint policy in relation to development in the open countryside. It does not speak to matters of openness (which is in any case a Green Belt issue) or character and appearance, but merely sets out those types of development that may be appropriate in the 'open countryside'. Although gypsy and traveller sites are not one of those types, the Council explicitly agreed that the appeal site was, in principle, an acceptable location for gypsy and traveller pitches. It was, therefore, unable to articulate how policy PS8 was relevant to the reason for refusal.
- 8. Policy H8 is specific to gypsy and traveller sites, setting out a range of criteria with which they must comply. At the Hearing, the Council was unable to point to any of the criteria offended by the appeal proposal. Although criterion ii) might appear relevant, the Council was clear that the proposal would not adversely affect 'trees and landscape'. Beyond that, criterion vii) requires that site proposals should not prejudice other relevant local plan policies. Given the Council's position noted above, it was unable to explain how or which 'relevant local plan policies' were prejudiced.
- 9. Neither the Officer's report nor the appeal statement provides any assessment of the character and appearance of the area or how it would be adversely affected by the proposal. When pressed at the Hearing, the concern appeared to relate to an intensification of caravans and associated paraphernalia on the site. Again, however, there was no cogent analysis of how and why this would be inappropriate, particularly given the acknowledgement that the site was

reasonably well contained and that the proposed increase in caravans / pitches would have no adverse landscape impacts.

10. I find, therefore, that the Council has failed to substantiate its reason for refusal, which is based on vague and generalised assertions about the proposal's impacts. It has also failed to demonstrate how the scheme offends the cited development plan policies.

Costs Order

11. In conclusion, I consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated.
12. 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 Cheshire East Council shall pay to Mr Jerry Smith the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Cheshire East Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Richard Schofield

INSPECTOR