

Costs Decision

Hearing held on 5 April 2017

Site visit made on 5 April 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 15 June 2017

Costs application in relation to Appeal Ref: APP/H1705/W/16/3164854 Land at Violet Lane, Baughurst RG26 5LP

- 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 G Jones for a full award of costs against Basingstoke & Deane Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for change of use from paddock to 4No gypsy pitches and associated works.
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Decision

1. I allow the application for an award of costs in the terms set out below.

The Submissions for Mr G Jones

2. The original application for costs was made in writing on 5 December 2016, and the Council's written rebuttal was received prior to the Hearing. At the close of the Hearing the appellant indicated that in addition to their comments on the rebuttal there would be additional claims regarding events closer to Hearing, and time was allowed for these to be submitted (Document 8), commented on by the Council (Document 13) and the appellant then had the final word (Document 17).

The Response by Basingstoke & Deane Borough Council

3. As stated above, the Council's rebuttal was made prior to the opening of the Hearing and their rebuttal of the additional claims was provided to an agreed timetable after the close of the Hearing.

Reasons

4. 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. Unreasonable behaviour may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. In answer to the question '*can costs be claimed for the period during the determination of the planning application?*' the Guidance states '*no, but all parties are expected to behave reasonably throughout the planning process*'. The preceding paragraph does say that costs applications may relate to events before the appeal was brought.
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5. Looking first at procedural matters, paragraph 16-048-20140306 refers to action expected of a Planning Authority where it is clear that they would fail to determine the application, but then refers only to appeals against non-determination. With regard to alleged delays and lack of communication during the Council's consideration of the application, whilst this might be considered an indication of failure to communicate, the provision is always there for an Appeal against non-determination. The appellant says that this was not pursued as it was inferred that a positive determination would be forthcoming. In fact, no-matter what the views of the Officers were, it would be for the elected members to make the decision, and the reasonableness of that decision will be tested in the substantive part of this Costs Decision.
6. During the process of the appeal, there does appear to be an unjustified delay in the Council agreeing the Statement of Common Ground and this is not just a useful document for the Inspector at the event, but should be available some time prior to allow the parties to focus their efforts. Delay in finalising the document would have put the appellant to unnecessary preparatory work and was unreasonable.
7. Turning to the substantive issues, the first reason for refusal concerns the proximity to services and this is a matter for judgement as well as measurement. Policy CN5 refers to matters that allow judgement of how reasonable a route would be, and the accompanying Appeal Decision has found the site to be more than a reasonable distance away having regard to ease of use and year-round accessibility. That the Officers recommended acceptance on this point and the Committee determined otherwise is not an unreasonable stance, and the evidence was sufficient for a judgement to be made.
8. The second reason for refusal refers to an adverse impact on highway safety whereas paragraph 32 of the National Planning Policy Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe, not just adverse. The accompanying Appeal Decision has not found the residual impact to be severe and it should have been clear to the Committee that whilst there are shortcomings in the southern exit onto the main road, a viable alternative outward route exists, and that the impact on the lane itself would not be likely to be harmful due to occupants being aware of its layout. A safe access onto the lane can be provided, and the evidence that turning has to be carried out while a caravan is attached to a vehicle is unreasonably based, firstly because manhandling and 'movers' can be used, and secondly because the object of bringing a touring caravan onto the site would be for it to stay there for a while, unhitched while the vehicle is used separately. This was unreasonable behaviour on the part of the Council.
9. With regard to the effect on the character and appearance of the area, this is a matter for judgement and the Landscape Officer exercised that judgement in one way, the Committee disagreed and they would be aware of what they were considering. The accompanying Appeal Decision has found the harm to be such that permission should not be granted. There is nothing unreasonable about this approach and outcome.
10. The Gypsy, Traveller and Travelling Showpeople Accommodation Assessment dated March 2017 was presented late in the appeal process, as its date implies. The appellant casts considerable doubt over aspects of the study and

suggested it had been hurried specifically for this Hearing and was not properly researched or reviewed. This stance is not an unusual one at appeal, and the Council has taken the opportunity to address the claims regarding other sites and the methodology. Due allowance has been made in the Appeal Decision over these doubts, but to have not released the document would have been unhelpful, and there is no substantial evidence that it would have been different if released later; it is the view of a recognised provider of such services. The weight attaching to the matter remains significant in consideration of both a permanent and temporary permission.

11. Planning balances where one side is stated by paragraph 27 to be 'significant' require the other side of the balance to be shown to be at least that or greater, in total. The Committee's findings on highway safety have not found favour at appeal, whereas those on the proximity and sustainability with regard to access to services, and the character and appearance of the area have been found reasonable, and weight apportioned accordingly. The first judgement on proximity and isolation has been a fine one in the Appeal Decision, the site is not truly isolated and would not dominate the settled community, but on balance does not enjoy reasonable access in the terms of Policy CN5 but with only moderate weight attached. The landscape effect however has been determined as harmful and considerable weight has been attached to this failing. Considerable weight is greater than the significant weight derived from paragraph 27 and the overall balance is against the grant of permission.
12. The evidence presented at appeal has been sufficient to allow a decision to be made on the character and appearance point along with access to services, and unreasonable behaviour in these regards has not been found. However, unreasonable behaviour did occur with regard to the matter of highway safety including the turning of caravans on the site, and the agreement of a Statement of Common Ground and this has resulted in unnecessary expense to the appellant. As a result it is concluded that a partial award of costs in those respects is justified.

Costs Order

13. 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 Basingstoke & Deane Borough Council shall pay to Mr G Jones, the costs of the appeal proceedings limited to those costs incurred in connection with the highway reason for refusal and with regard to the Statement of Common Ground; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Basingstoke & Deane Borough 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.

S J Papworth

INSPECTOR