
Costs Decision

Hearing held on 1 February 2017

Site visit made on 1 February 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 26 June 2017

Costs application in relation to Appeal Ref: APP/H1840/W/16/3157521 Land off Tewkesbury Road, Eckington, Worcestershire WR10 3DE

- 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 J Price for a full award of costs against Wychavon District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for change of use of land from waste ground to mixed use for stable and keeping of horses and caravan site for single Gypsy family with associated development (improvements to vehicular access, internal access track, hard standing, stable block/utility block, septic tank and retain electricity junction box).
-

Decision

1. I refuse the application for an award of costs.

The Submissions for Mr J Price

2. These were submitted in writing prior to the opening of the Hearing and supplemented at the Hearing as follows;
3. The Council do not refer to the possibility of a temporary permission, although the appellant's Planning Statement did refer to this possibility. There is no reference to the best interests of the children, or to the Equality Act. The Council have had regard to these matters on other applications but there is no balancing exercise in this case. It is acknowledged that the balancing exercise might be different when recommending approval in a Committee Report, but when refused by Members against that recommendation, there is a need to say more in the Appeal Statement to justify the Member's decision.

The Response by Wychavon District Council

4. The Council had indicated in a written reply, the intention of rebutting the Application at the Hearing and considered the Application premature in being prior to receipt of the Council's Appeal Statement. The oral rebuttal was as follows;
 5. It is not agreed that the recommendation to the Committee was a 'strong' one, but was the result of a balanced Report that set out all relevant matters for the Committee's consideration and decision. The decision has not prevented development that should have gone ahead, the Report made clear that the location was contrary to policy and set out all other considerations, so that this was a matter of judgement for the Committee. The failure to comply with one
-

criterion is ground to refuse permission. Planning Policy for Traveller Sites does not preclude sites within rural areas but the addition of the word 'very' to paragraph 25 of the 2015 publication on limiting new sites in open countryside adds weight to the Committee decision being reasonable. Whilst permissions have been granted for sites more than 1km from a settlement, the emerging Development Plan Document is not looking at such sites.

6. An oral report was put to the Committee on Human Rights and this was not repeated in the Appeal Statement, similarly with the matter of the best interest of children. The application was not for temporary use and included permanent features, however the recommendation was for a personal permission due to the site not being in a suitable location, but personal circumstances were recommended as indicating that restriction on the use.

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. This is a case where the Officers put forward a Report to Committee recommending the grant of a personal permission, in recognition of the personal circumstances of Mr Price and his family, as the location of the site was considered to be contrary to Policy SWDP17, and the proposal was not considered to constitute sustainable development. The elected members disagreed with that recommendation and resolved to refuse permission. Whilst not obliged to follow the recommendation of Officers, refusal should be on sound planning grounds and should be justified by evidence at appeal.
9. The fact is that the proposal is contrary to criterion i of Policy SWDP17, and even though the operation of the Council's site assessment, by making use of a 1km distance appears more flexible, the site is outside that distance as well. The road is not suitable for walking, particularly with shopping or a pushchair, and the site is in a location where the Planning Policy for Traveller Sites seeks very strict control. All of these considerations were fairly available to the Committee to resolve against the grant of permission.
10. The Officer's Report gave details of the appellant's personal circumstances, and set out the requirement with regard to Human Rights and the Equality Act. Whilst it did not spell out the considerations with regard to the best interest of the children, details of the children's circumstances was put before the Committee members. The need for sites was also set out in the Officer's Report. The Report rightly stated that in order for a decision to be made, it was necessary to undertake a balancing exercise, including the other material considerations as outline throughout the Report.
11. The consideration of this application, and now the appeal, requires particular weight to be attached to various differing considerations and circumstances, and for the resulting weights in favour and against the proposal to be balanced. The accompanying Appeal Decision has clearly attached different weight to various of the considerations, and finally come to a differing conclusion to that of the Committee, that resolved to refuse permission. Nevertheless, relevant materials considerations do appear to have been taken into account, and the weight to be attached to these considerations is a matter for the decision maker.

12. With regard to the evidence at appeal, the Council's Statement gave full details of the location and accessibility of the site, in order to substantiate the conclusion that the site is not in a sustainable location and is not fully supported by the Planning Policy for Traveller Sites due to being in the open countryside. Whilst other than reference to the need for sites, there is no balancing exercise, the aim of the Statement is to put the case against the site in the terms of the reason for refusal, and not to reiterate the full balancing exercise contained in the Committee Report, which is available to the appeal in any event. The presence of the Ward member of the District Council at the Hearing assisted understanding of the councillors' concerns.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated

S J Papworth

INSPECTOR