



---

## Costs Decision

Hearing Held on 11 July 2017

Site visit made on 11 July 2017

**by S J Papworth DipArch(Glos) RIBA**

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

**Decision date: 9<sup>th</sup> August 2017**

---

### **Costs application in relation to Appeal Ref: APP/P0119/W/16/3165761 Land at Northwick Road, Pilning, South Gloucestershire BS35 4HA**

- 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 Michael McDonagh for a full award of costs against South Gloucestershire Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for change of use of land to gypsy and traveller caravan site to facilitate the stationing of 1no mobile home, 1no touring caravan and erection of 1no amenity unit and associated works.
- 

### **Decision**

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

### **The Submissions for Mr Michael McDonagh**

2. This is an application for a full award of costs with a partial award in the alternative. The Council refused permission on Green Belt harm and case law in 'Dear' is that where the best interest of the child is to be placed in the balance, the weight is to be at least that of the Green Belt harm. Given that the Council accepted that there were other matters in favour of the proposal, the harm would be outweighed for any planning permission; temporary, personal or permanent. The Council has not identified any other harm and the balance that they have carried out is unreasonable.
3. This is the Council where the 'AZ' case occurred so they should have been well-aware of that, in addition to which the Council were made aware that the appellant had nowhere to live and had children. Therefore, the whole appeal was unnecessary as the first bullet point in Paragraph: 049 Reference ID: 16-049-20140306 of the Planning Practice Guidance; the other material consideration being the best interest of the children. As a result the Council's behaviour is against the fifth bullet point of acting contrary to, or not following, well-established case law. It is accepted that Officers change but it is expected that they be up-to-date.
4. In a s78 appeal the vast majority of the information is put before the Council early, with all the case law, comprehensive in this case, so that if the information at application was not sufficient to prompt consideration of the best interest of the child, that should have been clear at appeal stage. The appellant's fall-back in this Costs Application is for a partial award from the date that the appeal was submitted on 20 December 2016, at which point the

Council could have avoided the further appeal work and the Hearing by inviting another application.

5. Following the Council's Rebuttal, the appellant stated:

The Council confirm that they received further information but there has been no alteration to the matter of there being children, so they should have been aware of that. That information alone is sufficient to trigger a 'best interest' case, as the Council have duties under s11 of the Children's Act, unlike the Inspector.

6. The full details of the children are not submitted early for data protection reasons, and as they would not be required if the Council were minded to grant permission on a non-personal basis. The pertinent facts are that there are children with no home, and the idea that it took all of the later documents to trigger s11 and the United Nations Convention duties is unreasonable.

### **The Response by South Gloucestershire Council**

7. The application was made on 11 July 2016 and information on personal circumstances were requested in August. The balancing exercise was carried out with all items that the appellant said should be considered before personal circumstances. It was considered that further information was required and this was requested on 24 August, with more general information being received on 30 August.
8. The decision made on 9 September 2016 was based on the information received and concluded that personal circumstances did not outweigh the harm. The appeal was made in late December with more personal information including the Witness Statement at appendix A10 of the appellant's Appeal Statement. On 7 July a lot more detail was sent which would have been material. This late submission would be considered unreasonable and if it had been to hand earlier there may not have been an appeal. The information on schools and nurseries could have been provided earlier. In that event the outcome could have been different and costs could have been saved.

### **Reasons**

9. 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.
10. The reason for refusal refers only to inappropriate development and harm to openness, but does state that *'the case submitted comprised very little detailed information and as such could not show that they [other considerations] clearly outweigh the harm caused to the openness of the Green Belt'*. This is different from claiming that very special circumstances had been argued but not proved.
11. The National Planning Policy Framework states at paragraph 88 that substantial weight should be given to any harm to the Green Belt and hence in the absence of the Council identifying any other harm, that is the totality of harm in the balance. As that is a single harm, to Green Belt, the weight to be attached to the best interest of the child must be at least that level. It was certainly clear by the time of the submission of the appellant's Appeal Statement and numerous appendices that the family were homeless and that the family included children.

12. The Council would have been aware of their position regarding need, the availability of alternative sites, and a lack of a five year supply, even if they disagreed with the argument over the likelihood of a Green Belt location for sites and the failure of policy, notwithstanding the findings in the Pucklechurch appeal. It is inconceivable that no weight at all would have been afforded any one of these other matters. On that basis, the balance should have rested in favour of at least a temporary personal permission.
13. In the event the accompanying Appeal Decision has had a more protracted balancing exercise to carry out due to the 'any other harm' alleged by local residents, and this included character and appearance, a matter specifically not argued by the Council as confirmed at the opening of the Hearing.
14. Doubt exists over the point at which the components were to hand sufficient to make a conclusion to grant a temporary personal permission inescapable. It appears reasonable on the part of the appellant to not divulge more personal information than is thought necessary in the first instance, especially that concerning children, and the appellant's first stated position is in seeking a permanent non-personal permission. The consideration of the best interest of the child would be most unlikely to lead to that conclusion, but could only reasonably lead to a personal permission, whether temporary or permanent.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated, but only in respect of the work from the date of the making of the Appeal, 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 South Gloucestershire Council shall pay to Mr Michael McDonagh, the costs of the appeal proceedings limited to those costs incurred in respect of the work from the date of making the appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to South Gloucestershire 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