

Costs Decision

Hearing held on 20 June 2017

Site visit made on 20 June 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 14 August 2017

Costs application in relation to Appeal Ref: APP/C1760/W/16/3155960 Land north of junction of A30 with A3057, Leckford Lane, Stockbridge, Hampshire

- 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 Conrad Lane for a full award of costs against Test Valley Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for change of use of former chalk pit to create 1 Romany traveller pitch with associated ancillary development.
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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 Conrad Lane

2. These are in writing at Document 6 of the accompanying Appeal Decision, with final comments on the Council's rebuttal at Document 8.

The response by Test Valley Borough Council

3. These are in writing at Document 7 of the accompanying Appeal Decision.

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. The Council refused permission for two reasons and each will be considered as follows.

Reason 1 Principle of Development

5. The reason for refusal alleged an absence of information on meeting need and personal circumstances such that the principle of development had not been established, contrary to Policy COM2, by reason of COM13 criterion c). That latter criterion states that development will be permitted provided that the proposal helps meet the identified need. It is noted that there is no alleged failure to accord with criterion b); that the potential occupants are recognised as gypsies, travellers or travelling showpeople.
 6. The question of gypsy status appears confused with the Council's Hearing Statement contradicting the Officer's Report and its positive finding. The
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Statement advises that '*on review, the Council now considers that this was an error*' and goes on to find that gypsy status had not been proved. Clearly the original finding was the reason why this was never taken forward as a reason for refusal and why the applicant did not consider it necessary to give further information. It is the case that little time was taken at the Hearing to test the claimed status, as would have been necessary regardless of the Council's stance, but that should have been on the basis of an agreed position between the parties.

7. The Council has, in effect, introduced an additional reason for refusal, by not including criterion b) in the original Refusal Notice, relying only on criterion c) which is clearly different. The Planning Practice Guidance states at paragraph: 047 Reference ID: 16-047-20140306 that introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen is an example of unreasonable behaviour which may result in an award of costs.
8. Criterion c) which was referred to in the reasons for refusal can be satisfied by there being an unmet need identified in an up-to-date accommodation needs assessment, but at the time of the Council's considerations and refusal, no such document was publicly available. The Inspector in the Wellow Wood Road case commented on there being an immediate need, and it is the case that the permission that was granted then reduced that identified need, but did not fully satisfy it. In the event the publication of the '*Hampshire Consortium Gypsy, Traveller and Travelling Showpeople Accommodation Assessment 2016 – 2036*' only the day before the Hearing led to even criterion c) being withdrawn as a reason for refusal.
9. The Council cite paragraph 24 of the Planning Policy for Traveller Sites and the advice to consider the other matters listed. Whilst it may be pertinent to consider the personal circumstances of the appellant and what the alternatives may be for him, the letter dated 5 January 2016 from the Council's Housing and Environmental Health Service provides evidence of impending homelessness and should have been made available.
10. Paragraph 2.5 of the Council's Costs Rebuttal states '*The LPA notes that the Appellant's representative asked the Case Officer if any further information was needed to determine the application. The Case Officer's response that no further information was needed is correct as sufficient information was available to determine the application, albeit not favourably for the applicant.*' Clearly the appellant's agent would not make such an enquiry only to ensure that the Council had enough information to be able to refuse the application.
11. On the evidence, there was unreasonable behaviour leading to unnecessary expense in the addition of criterion b) as an objection. The failure to acknowledge that there remained an identified need, however small, was also unreasonable. It is apparent from documents presented to the Hearing that had the Officer been more forthcoming as to why sufficient information was to hand, further information could have been submitted.

Reason 2 Character and Appearance

12. The reason for refusal cites Policy E2 criteria a) regarding the impact on the immediate area and landscape character and c) on integration with the landscape character of the area. Whilst both require a judgement to be made,

and that is not usually considered unreasonable unless perverse or unsubstantiated, it is noted that criterion c) refers to '*proposed landscaping and landscape features [which] enable [the development] to positively integrate into the landscape character of the area.*' It would be reasonable to make the overall judgement on the basis of the ability for '*proposed landscaping and landscape features*' to obtain the sought-after end result.

13. There is a fine balance to be struck here between mitigating the effect of introducing of a significant amount of development into what should be a disused, largely empty quarry, much of which is below ground level; and the risk of fencing-in and isolation referred to in paragraph 26d) of Planning Policy for Traveller Sites. It is appreciated that the appellant would not want, or even be in a position, to employ additional professional assistance in designing a landscape scheme when the principle of development would be at risk, as has been shown. However, the drawings are sketchy and on this particular site, more should have been supplied.
14. The judgement of the accompanying Appeal Decision is that conditions can address the shortcomings in the originally submitted information, and can ensure compliance with Policy EN2. But, it was not unreasonable for the Council to have concluded that there was doubt. It would not have been appropriate to have relied upon conditions without the certainty in the decision maker's mind that additional landscaping would overcome what would otherwise have been an intrusive form of development. This was a fine judgement due to the nature of the site and the surroundings; to have found against the scheme on criteria a) and c) of Policy E2 was not unreasonable and substantial evidence was submitted at appeal.

Conclusions

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of reason for refusal 1, 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 Test Valley Borough Council shall pay to Mr Conrad Lane, the costs of the appeal proceedings limited to those costs incurred in respect of reason for refusal 1 on gypsy status and need; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Test Valley 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