



Costs Decision

Hearing Held on 6 December 2016, 18 & 19 May 2017

Site visit made on 19 May 2017

by Lesley Coffey BA Hons BTP MRTPI

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

Decision date: 17th August 2017

Costs application in relation to Appeal Ref: APP/P1615/W/3148326 Greenacres, Gloucester Road, Corse, Gloucestershire GL19 3BY

- 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 Leonard Butler for a full award of costs against Forest of Dean District Council.
 - The Hearing was in connection with an appeal against the refusal of the Council to planning permission for the use of land for the stationing of caravans for residential purposes for 4no. additional gypsy pitches to include the formation of hardstanding and utility/dayrooms ancillary to that use in addition to the provision of a utility/day room on the existing gypsy pitch to be retained, granted in appeal decision APP/P1615/A/08/2089675 and the retained use of land for the stabling of horses in the adjacent paddock.
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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 Butler

2. An application for a partial award of costs in relation to the adjournment of the Hearing as a consequence of the late notification of the Hearing to third parties was made in writing. At the Hearing the appellant made a full application for costs and the following additional points were made.
3. The Council refused permission for a development that could have reasonably been permitted given that it complied with policy, especially national planning policy within the NPPF and PPTS.
4. The Council failed to produce evidence to support its reasons for refusal in respect of the principle of the location, the effect of the proposal on the character and appearance of the area and the sustainability of the proposal. The evidence submitted was vague and did not include any objective analysis.
5. It also failed to consider whether suitable mitigation could be provided by way of conditions. The previous decision was a material consideration in terms of the distance to services and the principle of location. The Council made no reference to the personal circumstances of the appellant, his human rights or the Public Sector Equality Duty.

The response by Forest of Dean District Council

6. The Council clearly indicated within its refusal the conflict with policies CSP.1, CSP.4 and CSP.6 of the Core Strategy and policy AP1 of the emerging Allocations Plan, as well as the NPPF. The Council substantiated its reasons for refusal within the officer's report, as well as its statement of case and its evidence at the Hearing. The Council's consideration of the landscape impact of the proposal involved reference to the Forest of Dean landscape Character Assessment and Landscape Supplementary Planning Document. Whilst the visual impacts on the landscape could be mitigated through conditions the impact on landscape character could not. The Council had regard to the previous inspector's decision in its statement and during the course of the Hearing.
7. The adjourned Hearing took place on 6 December 2016. The Council realised its error on 29 November 2016 when it wrote to local residents to advise them of the arrangements for the Hearing. The Planning Inspectorate was advised by telephone on the same day.
8. The Council accepts that it did not fully comply with the procedural 'guidance' in that it did not give interested parties two weeks notice of the arrangements for the for the Hearing. Notwithstanding this, had the inspector chosen not to adjourn the Hearing it could have been fully undertaken and no-one would have been disadvantaged since all of those present on 18 and 19 May 2017 had attended the previously adjourned Hearing.

Reasons

9. Irrespective of the outcome of the appeal, costs may only 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 Officer's report and the Council's statement make clear reference to the landscape character assessment and the impact of the proposal on the landscape as well as the relevant development plan policies. The Council provided an analysis of the effect of the proposal on the surrounding area, whilst I have reached a different conclusion on this matter, I do not consider that the Council behaved unreasonably in respect of this issue.
11. The Council assessed the distance of the site from services and the likely reliance on the use of private cars in both its statement and the officer's report. It balanced these issues against the need for sites. These are both matters of judgement and the Council did not behave unreasonably in this regard.
12. The Council acknowledges that the visual harm could be mitigated by way of a suitable condition or conditions, but does not accept that this would address the landscape harm and thereby overcome the reason for refusal. In view of its conclusion regarding the impact on the character of the area, this was not an unreasonable position for the Council to adopt.
13. Neither the Officer's report, nor the Council's statement appear to have had specific regard to the previous appeal decision in terms sustainability, however, nor is there any evidence to indicate that the decision was disregarded. Although it would seem that the Council did not take account of the personal circumstances of the appellant and his family, including his human rights, the best interest of the child living on the appeal site and the Public Sector Equality

Duty, it would appear that there was no evidence in respect of these matters submitted with the application. Moreover, at that time the Council believed that there was a surplus of gypsy and traveller sites within the District.

14. Although *Procedural Guide Planning Appeals England* (August 2016), published by the Planning Inspectorate, has no statutory status, it provides guidance in respect of the Town and Country Planning (Hearings Procedure) (England) Rules 2000. All parties are expected to follow the general principles to ensure that no party is prejudiced and to ensure an efficient and fair appeals service.
15. The Council does not dispute that the notification letter was not sent out to local residents until 29 November 2016. The letter was received by local residents on Thursday 1 December, 3 working days before the Hearing. Given the limited time between residents receiving the notification letter and the commencement of the Hearing it would have been prejudicial to local residents had the Hearing proceeded. Whilst the Council states that all of those present on 6 December were able to attend on 18 and 19 May 2017, this is in fact incorrect. Moreover, it was not possible on 6 December to predict whether other parties wished to attend. Therefore to proceed with the Hearing at such short notice could have been prejudicial to interested parties. In these circumstances there was no alternative other than to adjourn.
16. I note that the Council states that it telephoned the Planning Inspectorate to inform it of the situation on 29 November 2016, however, there is no record of any telephone call from the Council, and the Council was unable to name the person contacted. The first communication received by the Planning Inspectorate was an email on 5 December 2016. This did not refer to the delay in sending out the letter, it merely attached a copy of the letter. I consider that this delay, although unintentional, amounted to unreasonable behaviour on the part of the Council and gave rise to an unnecessary adjournment.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

18. 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 Forest of Dean District Council shall pay to Mr Leonard Butler the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in Mr Green and Ms Reed attending the adjourned Hearing on 6 December 2016; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Forest of Dean District 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.

Lesley Coffey

INSPECTOR