
Costs Decision

Inquiry Held on 11-14 and 18 July 2017

Site visit made on 14 July 2017

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 17 August 2017

Costs application in relation to Appeal Ref: APP/Y3940/W/16/3162581 Land to the south east of South View and north of Webbs Court, South View, Lyneham, Wiltshire SN15 4PG

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wiltshire Council for a partial award of costs against Gleeson Developments Ltd.
 - The inquiry was in connection with an appeal against the refusal of planning permission for residential development of up to 60 dwellings, including the creation of new vehicular access, public open space, children's play area, landscape planting, pumping station, surface water attenuation and associated infrastructure (outline application with all matters reserved except means of access only in relation to a new point of access into the site).
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Decision

1. The application for an award of costs is refused.

The submissions for Wiltshire Council

2. The application was made in writing, ID19, and provided to the appellant in advance. There is also a short reply to the appellant's response, ID21. There were no further oral additions.
3. The Council claim a partial award of costs related to unreasonable behaviour in respect of substantive rather than procedural behaviour. In essence the Council's case revolves around one point highlighted by two paragraphs in the Planning Practice Guidance (PPG). The Council point to paragraph 16-053-20140306 of the PPG, bullet point two, which advises that an appellant may be at risk of an award of costs where the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same, site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period. Added to this it is also noted that at paragraph 16-049-20140306, bullet point 6, of the PPG, local planning authorities may be at risk of an award of costs if they persist in objections to a scheme or elements of a scheme which the Secretary of State has previously indicated to be acceptable.
4. The Council note that the lists in the PPG are not exhaustive and contend that these demonstrate that it is unreasonable behaviour for a developer to persist

in running a similar, or the same, argument when such matters have recently been considered and addressed by an Inspector. In this case the Council refer to a decision in respect of Forest Farm¹ dated 22 June 2017. It is contended that matters related to the housing land supply, and in particular those related to both Gypsy and Traveller completions and the appropriate buffer to apply, were argued before the Inspector in the Forest Farm appeal on the basis of the same evidence and that the Inspector found against the appellant. It was further contended that that decision was a matter of weeks ago and there has been no substantive changes that would mean a different decision should be taken and therefore it was unreasonable for the appellant to rerun those arguments in front of me.

5. The Council noted that the appellant had dropped the points they had made in the run up to this appeal in respect of the Liverpool vs Sedgfield argument where it was accepted the original position was no longer tenable in the light of the Inspector's conclusions on the matter at Forest Farm. The Council confirmed that its claim was not in respect of the appellant running a 5 year housing land supply argument but running the same arguments in respect of these two particular points specifically.
6. The Council contend that considerable time and resources were expended on preparing and presenting evidence and submissions on these points and that the Inquiry itself was drawn out longer than was necessary in considering them. The Council therefore incurred additional and unnecessary expense in defending these matters

The response by Gleeson Developments Ltd

7. The appellant provided their response to the Council's claim in writing, ID20. Their position being that the Council informed the appellant on the evening before the Inquiry that it was withdrawing 300 units from its 5 year supply calculation as a result the difference between the parties was substantially reduced and would be resolved in favour of the appellant if the Inspector accepts their case in respect of the disputed sites. On that basis alone it was not unreasonable for the appellant to have pursued its points on delivery and on the 5 year housing land supply.
8. The appellant notes that neither of the examples cited from the PPG are relevant. The site is not the same site, nor is the development the same as in the Forest Farm appeal. The guidance in respect of local planning authorities is not relevant to appellants.
9. The appellant further argues that the Gypsy and Traveller and buffer points are related to expert judgement on which different Inspectors may have different judgements at different times. It was essential for Mr Miller in this case to give his views on the reasoning of the Inspector in the Forest Farm case. In terms of the buffer, some four months had passed and a draft housing delivery paper had been published since the Inspector considered the matter.
10. Additional evidence and argument in the form of the implications of the Technical Adjustment to the National Planning Policy Framework (the Framework) in respect of Gypsies and Travellers was before this Inquiry.

¹ APP/Y3940/W/16/3150514

11. It was also contended that the Forest Farm decision itself was a material factor that the appellant had to address especially since the challenge period is still running. I was informed during the Inquiry that it was the appellant's intention to challenge that decision and indeed they were in the process of putting together a challenge. (Following the closing of the Inquiry I was informed by the appellant that the challenge papers were filed with the Court on 28 July 2017). It was in any case open to this Inspector to arrive at a different conclusion on the facts presented to him if he justified the reasoning why those conclusions were contrary to the Inspector's conclusions at Forest Farm.
12. The appellant also contested that any additional expense had been incurred. The written material had all been produced prior to the Forest Farm decision except for the appellant's Position Statement which was a direct response to it. These points made no difference to the time spent at the Inquiry and therefore do not relate to any identified costs which could be claimed.

Reasons

13. 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.
14. At the crux of the matter is whether it is unreasonable behaviour for the appellant to continue to argue a case that has recently been argued in front of another Inspector and which had been unsuccessful. In essence I accept that this could be seen to be unreasonable behaviour and whilst not a perfect fit with either of the two points in the PPG highlighted by the Council, there is a general matter of similarity of principle that once a decision has been taken and clearly determined it is unreasonable to keep re-running the argument if there have been no substantive or material changes in circumstances.
15. I do however accept the appellant's points that the appeal scheme before me does not relate to the same site, indeed it is not in the same Community Area and therefore there is a different policy basis; nor is it a similar development. The nature of the proposals, in scale and terms, are also different. In that regard these matters are not such that they are specifically covered by the examples in the PPG.
16. Whilst I accept that the two issues against which the claim is raised, Gypsy and Travellers and the appropriate buffer, are matters of judgement, it is not appropriate to argue simply on the basis of the potential for a different Inspector to arrive at a different judgement; there should be some material difference to enable a different decision to be arrived at, so that consistency can be maintained. That being said I am also conscious that the Forest Farm decision is now subject to challenge and it is perfectly legitimate for a party to challenge a decision if they believe they have good grounds to do so. A decision subject to challenge has a degree of uncertainty.
17. On the basis of the information before me the appellant took the opportunity to consider the reasoning of the Forest Farm decision and to address those matters. In effect this was new material and a different circumstance which would not have been before that Inspector. The appellant placed a new emphasis on the Technical Adjustment to the Framework, which although had been in place at the time of Forest Farm was not argued in front of that Inspector. In relation to the buffer time had moved on again and there was

some further evidence in terms of the slippage of strategic sites, which although more directly related to the disputed sites, potentially influenced the way circumstances under which future delivery should be considered and therefore the trend for delivery and in consequence the appropriate buffer to be applied. There had also been a further draft housing delivery paper.

18. Taking these matters in the round I am satisfied that it was not unreasonable for the appellant to argue the matters of Gypsy and Traveller completions and the appropriate buffer in the manner they did. There was information placed before this inquiry that was not before the Forest Farm inquiry, further time had elapsed and there were some changes in circumstance. As I have not found that unreasonable behaviour occurred, any expense incurred in addressing these matters was not wasted or unnecessarily incurred.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. I therefore conclude that the application for costs should not succeed.

Kenneth Stone

INSPECTOR