
Costs Decision

Hearing Held on 22 May 2018

Site visit made on 22 May 2018

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 19 June 2018

Costs application in relation to Appeal Ref: APP/V2635/W/17/3180116 The Jays, The Common, South Creake, Fakenham, Norfolk NR21 9JB

- 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 Mrs Jean McPhee for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for carrying out development without complying with conditions which were attached to a previous planning permission.
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Decision

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

The submissions for the appellant

2. The appellant's claim for costs was made in writing. The principle points made relate to allegations that the Council failed to undertake a proper planning balance without acknowledging the positive aspects of the scheme and that the Council failed to take proper account of Article 8 of the European Convention on Human Rights and the best interests of the children affected by the decision.

The response by The Council

3. The Council responded to the claim in writing, making the following main points: the report and statement acknowledge areas where the proposal would not give rise to planning problems; the report and statement considers Article 8 and offers a balanced view; the submitted statement considers the situation of the children. The Council states that it has determined the application in accordance with the provisions of the development plan and there has been no unreasonable delay.

Reasons

4. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and 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.
5. In relation to the consideration of the status of the appellant's family members as gypsies and travellers, whilst I have not agreed with the Council, I consider

that their conclusion is not unreasonable in this respect. The appellant then makes reference to the provisions for ethnic gypsies who do not fall within the PPTS definition but who still wish to live in caravans. In my view, this cannot be a criticism of the GTAA because it specifically addresses the needs of those who do fall within the PPTS definition. As the Council states, the needs of other groups are covered by other policies within the Core Strategy, including those of various groups and with differing needs. With respect to this individual planning application, I do not find that the Council has acted unreasonably and any other specific needs associated with differing sectors of the housing market are perhaps matters to be considered within a local plan process. What is clear is that, having considered that not all of the intended occupiers fell within the PPTS definition, the Council considered the proposal as, at least partly, dealing with housing which did not enjoy the special considerations that gypsy and traveller sites have. As I have stated, although I do not agree with the conclusion that the Council reached in relation to the PPTS definition, I do not consider that it was an unreasonable view and so the determination of the application in relation to its wider housing policies was not unreasonable.

6. The Council's report and statement clearly acknowledges that there are aspects of the proposal that are acceptable and even indicates that the site would be acceptable for people falling within the PPTS definition. I do not find that the Council has ignored these matters but they have included them within and appropriate balance.
7. In relation Article 8 of the European Convention on Human Rights, I am satisfied from the submitted report and statements from the Council that appropriate reference and consideration has been given to this matter. It seems to me that any difference is as a result of the weight that is given to the factors involved and what represents a proportionate response and whether the interference with those rights is justified in order to achieve the public interest. Whilst I am mindful that this is not a matter that I have had to conclude on in my main decision, I am satisfied that the Council has not acted unreasonably in this respect.
8. The Council makes reference to the effects of the decision on the children involved, including on their education. They make clear reference to relevant case law in their statement. Again, whilst I have not had to conclude on this matter in my main decision and so I do not make any determination as to whether I agree with the Council's conclusion, I am satisfied that they have come to their conclusion in a reasonable manner and taking account of the effects of the decision on the children.
9. In the light of my findings, I conclude that there has been no unreasonable behaviour by the Council. Consequently, the application for an award of costs is refused.

S T Wood

INSPECTOR