

Costs Decision

Site visit made on 19 June 2018

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2018

Costs application in relation to Appeal Refs:

APP/L3815/C/17/3180903 & APP/L3815/W/17/3179768

Unit 2 , Ten Acres, The Old Army Camp , Cemetery Lane, Woodmancote, Westbourne, PO10 8RZ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mark Funnell against Chichester District Council
 - The appeals related firstly to an enforcement notice alleging a change of use of the land to use as a HGV Operating Centre and, secondly, to a refusal of planning permission (retrospective) for use as a HGV Operating Centre with ancillary offices and stores.
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Decision

1. The application for an award of costs is refused

Reasons

2. Planning Practice Guidance (PPG) advises that, 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 expense in the appeal process.

The gist of the case for the Appellant

3. The costs claim relates to both the enforcement appeal and the planning appeal. It is contended that it is unreasonable of the Council to decide that it is the use of the land that is causing the material harm alleged. Furthermore it is stated that the results of the works required by the notice will make no difference in landscaping terms as the fencing will remain in place. With regard to the heritage issue raised by the Council, the hours of operation (traffic movements) are referred to. Reference is also made to a previous appeal where costs were awarded against the Council for what is referred to as a 'spurious' issue on heritage grounds. It is further argued that the assertion of the LPA that planning conditions would not overcome the objections to the development is simply not credible and extremely un-proactive.

4. In relation to the refusal of planning permission it is contended that the Council applied the wrong test under Policy 2 of the CLP in referring to the site as Rural. It is stressed that it is previously developed land (PDL) and that HGV operators are, in any case, required in rural areas. The Council is accused of not considering rural diversification as well as misinterpreting Policy 45. This policy does not require a proposal to fulfil an essential local need. It is contended that the HGV use is essential, small-scale and a local need which cannot be met within or adjacent to existing settlements.

5. Based on the previous decision it is also unreasonable of the Council to raise traffic issues and no objections have been received from adjacent site owners. It is

also considered that the Council has acted unreasonably by comparing the HGV use against a residential use which creates more traffic movements over a 24 hour period. It is also unreasonable to consider that vehicles should not be seen from the roadside and it is indicated that the wider site is used for a series of other commercial uses.

6. It is also considered that the Council acted unreasonably in relying on Policy OA1 of the WNP which is at odds with the NPPF in relation to a presumption in favour of sustainable development. It was also unreasonable of the Council not to apply policies that are more directly relevant to the proposal in terms of employment and transport; not to consider the use of conditions and again to contend a harmful effect on the setting of the non-designated heritage asset.

7. The Council's unreasonable behaviour in both appeals has caused unnecessary loss and expense in the appeal process for the appellant in relation to both appeals.

The gist of the LPA response

8. The Council does not accept that it has acted unreasonably. It is not accepted that the Council applied the wrong tests when looking at the site location under Policy 2 of the CLP. This policy was referred to and clearly sets out the development strategy and settlement hierarchy within the District. It is stressed that anything outside of the settlement boundaries is located within the 'Rest of the Plan Area' (RPA) and that there can be no question that the appeal site is within the RPA.

9. With regard to the question of the land being PDL, this is not disputed by the LPA. However, it is stressed that by definition PDL and rural areas are different and in any case it is possible to have PDL within the RPA. The appellant's assertion that the HGV use requires a countryside location is not accepted. The delegated planning report sets out the LPA's assessment of Policy 45 and stress that no justification has been put forward to demonstrate a need on this particular site. The Council stresses that Policy 46 is not applicable since it relates to existing buildings.

10. The Council does not accept that referring to an emerging WNP was unreasonable and that the delegated officer indicated that the policy could not be afforded great weight. The WNP has gone through the Examination process and can carry some weight in the decision-making process. It is not considered, therefore, that the LPA acted unreasonably in referring to Policy OA1 of the WNP.

11. With regard to the highways issue the delegated report indicated that there were no objections on highway grounds. The Council has not disputed this in the reasons for refusal. The reference to traffic movements in reason for refusal No 1 was not concerned with highway matters but to the combined impacts of the proposed use in this location. This included the effect on amenities due traffic noise and disturbance for nearby residents.

12. The Council contends that it applied policies which clearly related to the HGV use of the site. Policy 8 is considered to relate to transport on strategic and allocated housing sites and Policy 39 is applicable in this instance. Whilst Policy 3 was not referred to, its application would not have affected the planning decision and the appellant has not been prejudiced by the fact that it was not referred to in the assessment of the application.

13. The fact that those advising the appellant have a difference of opinion with the LPA on whether the proposal complies with policies, does not amount to unreasonable behaviour. With regard to the heritage asset points the LPA stresses that the HGV use is significantly materially different to the residential pitches appeal. Finally the LPA contends that the absence of objections from immediate neighbours

does not mean that there has been no impact on neighbouring amenity. In summary the Council does not accept that it has behaved unreasonably or that their actions led to unnecessary loss and expense in the appeal process for the appellant.

14. With regard to the enforcement appeal the LPA indicates that LPAs have discretion to take action where it is considered expedient to do so having regard to the development plan and any other material considerations. The Council considers that it has acted proportionally in this case and refers to paragraph 207 of the NPPF. It is also stressed that the issuing of the notice has resulted in both appeals being able to be considered together and thus reducing the administration required for all concerned and saving time and costs.

Assessment

15. Having considered all of the representations and the relevant policies I do not consider that the Council acted unreasonably with regard to the application of Policy 2 of the CLP. As indicated this clearly sets out the development strategy and settlement hierarchy within the District and anything outside of the settlement boundaries is located within the '*Rest of the Plan Area*' (RPA). The appeals site lies within the RPA and the development plan is the starting point for any decision. The site is rural as opposed to being urban despite the fact that it is PDL.

16. With regard to the contention that Policy 45 has been misinterpreted, I do not agree. The delegated planning report sets out the LPA's assessment of Policy 45 and it is stressed that no justification has been put forward to demonstrate a need on this particular site. This cannot be disputed in my view since it is evident that the decision to use this site was related to an urgent need for a site (which could have been anywhere in West Sussex?) and the fact that the site was readily available. These reasons, in my view, are not sufficient reasons to show that there is a demonstrated need for a HGV use on this site.

17. I accept that the land is PDL and that HGV sites can be required to be located in rural areas. I also note the point about rural diversification. However, on this last point a rural diversification development which detracts from, rather than conserving or enhancing a rural area cannot be justified simply on the basis of diversification. In any case this is not diversification of a use which definitely requires a rural location. Furthermore I have concluded in my appeal decision that although the use might be classed as small in scale, it is not essential that it be located in this part of the RPA and is not in my view a '*local need*', taking into account the County wide operations.

18. Turning to the fact that one of the reasons refers to traffic issues, again I do not consider that this amounted to unreasonable behaviour on the part of the LPA. The Council was concerned about traffic movements and noise in relation to the way the vehicles operated at the site. I have shared those concerns and concluded that harm has been caused due to early morning engine and vehicle noise as well as noise in the late afternoons and early evenings. The fact that there are minimal movements between those times does not outweigh the harm caused. I also agree with the Council that traffic movements relating to this HGV use are significantly materially different to the residential use of the Gypsy and Traveller pitches and to the previous storage use of vehicles and equipment. As indicated by the Council the reference to traffic movements in reason for refusal No 1 was not concerned with highway safety matters but with the combined impacts of the proposed use in this location and this included the effect on amenities.

19. I acknowledge the points made regarding Policy OA1 of the WNP and the NPPF. However, the principle of giving some weight to such emerging policies does not in itself constitute unreasonable behaviour. Clearly the WNP is not adopted yet.

Nevertheless it is a material consideration in these two appeals and particularly where the principles of its policies have the same basic aims and objectives as the development plan policies which themselves are up-to-date with the NPPF. I do not accept, therefore that the Council acted unreasonably in this respect.

20. Nor do I consider that it was unreasonable of the Council not to apply all of policies which are considered on behalf of the appellant to be more directly relevant to the proposal. A Council is not obliged to rely on all of the policies of the development plan and in fact Policy 46 is not considered to be relevant because it refers to existing buildings. As long as a LPA substantiates its reasons for refusal by reference to the most relevant and appropriate policies, it cannot, in my view, be found to have been unreasonable.

21. Turning to the question of the land being PDL which is not disputed by the LPA, I agree that that by definition PDL and rural areas are different and it is possible to have PDL within a rural area such as this RPA. I have made this point in my appeals decision.

22. On the heritage issue there were significant objections by the WPC and others as well as by the Council. These related mainly to the effect on the tranquil and peaceful aural environment that visitors should be able to reasonably expect in such surroundings. Again I consider that there are significant material differences between these appeals and the previous one where the LPA had costs awarded against it. These differences relate to the different characteristics of usage of the lane by HGV vehicles as opposed to residential vehicles. I do not accept, therefore, that the Council acted unreasonably in relying on the impact of the HGV use of the site on the non-designated heritage asset.

23. In the enforcement appeal I do not accept the contention that it was unreasonable of the Council to decide that it is the use of the land that is causing the material harm alleged. I have agreed with their view in the three most significant of the five main issues in my appeal decisions. I do not accept that the results of the works required by the notice will make no difference in landscaping terms just because the boundary fencing will remain in place. The requirements will result in the removal of the main obtrusive elements and the land will essentially be restored to an appropriate condition suitable as a Gypsy Traveller pitch or for some other future approved land use. I agree with the Council that planning conditions would not overcome the objections to the development and cannot accept, therefore, that the refusal to accept appropriate conditions was not credible.

24. In conclusion I do not consider that the Council has acted unreasonably in these cases and I agree with them that the fact that those advising the appellant have a difference of opinion on whether the proposal complies with policies, does not amount to unreasonable behaviour. It follows that I do not consider that the appellant has incurred unnecessary loss and expense in the appeal process. The parties should be responsible for their own costs.

25. For the above reasons the costs application fails.

Anthony J Wharton

Inspector