
Costs Decision

Inquiry Held on 11 -13 June 2019

Site visit made on 11 June 2019

by G D Grindey MSc MRTPI Tech Cert Arb

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

Decision date: 8th July 2019

Costs application in relation to Appeal Ref: APP/F1040/W/18/3217891 Boden's Sticks, Cropper lane, Osleston, Ashbourne, DE6 5BL

- 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 South Derbyshire District Council for a partial, or in the alternative, a full award of costs against Mr and Mrs R Lewis.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the change of use of existing woodland to a site for the location of 6 log cabin holiday letting units falling within the definition of caravans.
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Reasons

1. Planning Practice Guidance (PPG) 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.
2. I find that both reasons for refusal refer to ecology/woodland/priority habitats and species. The appellant sought to rely on evidence that was self-evidently out of date (the Phase 1 Habitat Survey – paragraph 3.6 gives it a shelf life of 2 years from December 2015) and other reports prepared in 2016. CIEEM advice suggests that reports more than 3 years old are unlikely to still be valid and most surveys are likely to need to be updated. The appellants had a reasonable time frame in which to do this but chose not to.
3. As the CIEEM advice says "it is important that planning decisions are based on up to date ecological reports and survey data". I agree. I consider that I was hampered in a full understanding of the development implications by dated and inadequate survey work. I note many of the reports were prepared at sub-optimal survey times when species might have been hard to find and that further work is recommended in many reports but has not been carried out.
4. The Local Plan makes it a requirement, at policy BNE3B, that for development involving priority habitats and species, appropriate surveys are submitted to permit a full understanding of the likely impacts. It is planning policy that decisions should be made in accordance with the development plan so adherence to this is not an optional extra.
5. This action is all the more surprising as the appeal application follows an earlier application that was refused in April 2017 for 2 reasons, both of which begin: "insufficient information has been submitted to demonstrate that the proposal could be accommodated on this site without extensive damage to the mature

- trees” A straightforward reading of the reasons for refusal of the earlier application cannot but lead the appellants to the conclusion that a fully detailed subsequent application needed to be made.
6. Instead, the appellants submitted much of the earlier documentation again, including an ecology report which refers to “the installation of a maximum of 10 luxury camping pods (glamping pods) – CD1.12; the Phase 1 Habitat Survey which became out of date during the consideration of the application, a Biodiversity Management Plan that contains, at Figure 2, a plan of the proposed caravan positions that bears no relation to the application plan (CD1.13) a Great Crested Newt Method Statement which also contains a site layout plan that does not accord with the submitted application plan (CD1. 14).
 7. These discrepancies lead me to have reduced trust in the contents of the reports since I am not able to be confident that they are dealing with the same scheme to which the Council gave formal consideration and that I must deal with. I have expressed my frustration and puzzlement throughout my decision letter about the conflicting or missing evidence on the nature of the proposals before me; I will not repeat them here, but my costs decision should be read alongside my appeal decision, particularly paragraphs 5 – 14, 19, 20, 22 – 28, 31, 36 – 39, 46, 55 - 61, 63, 64, 66 and 68. To my mind it should have been obvious to the appellants that the appeal had no reasonable prospect of succeeding.
 8. In addition, and equally troubling is the appellants’ evolution of their proposals as we worked through the inquiry – very late in the day and putting the Council at a potential disadvantage since changes to the case did not emerge into the open until after the Council’s 2 technical witnesses had been called.
 9. The Statement of Common Ground, at section 5, refers to the visibility splay plan and lists it among the plans for consideration at the appeal. This was signed the week before the inquiry – that plan was **agreed**. Remarkably, on the second day of the inquiry, the visibility plan was withdrawn. The appellants relied upon their own, and an entirely new, interpretation of the highway authority’s consultation reply, dated November **2016** (on an earlier application) as meaning that they could merely reduce the existing hedgerow to 0.6m high.
 10. They produced no correspondence with the highway authority to confirm their interpretation and produced nothing else in the way of evidence that this was what was meant. An ordinary reading of that consultation reply does not support their submission and I find it unreasonable that they should submit this so late and unsupported by any evidence, particularly where highway safety is involved.
 11. The treatment of the hedgerow to the west was referred to in the reasons for refusal, it is unreasonable to change the hedgerow proposals from partial removal to retention but reduced in height from that originally considered by the Council. The Council prepared its case based upon one proposal but had to respond to another during the inquiry itself. They, like me, were entitled to rely on the Statement of Common Ground which, at the PIM, I had urged them both to complete to hopefully reduce inquiry time; it was unreasonable to row back from that agreed Statement .
 12. Similarly, the plan of the possible siting of the septic tanks and drainage field was produced during the inquiry too. These had been variously described as to

be sited “within the clearing away from the root system of mature trees” or outside the appeal site altogether. Mr Steedman was dismissive of the need to know where these might go and/or what apparatus might be required/what the impact might be; he said the issue could all be dealt with under Building Regulations. However, PPG states that “applications for developments relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment”¹.

13. In the alternative a package treatment plant was suggested by the appellants, but the PPG requires such a proposal to set out clearly the responsibility and means of operation and management; this is the government’s policy guidance. It is unreasonable, firstly, to fail to give any location information at all, not least because the appellants’ evidence states that drainage runs would be created with a mini-digger. Thus it is obvious that there could well be vegetation loss within a priority habitat woodland as a result, depending on the routes chosen. Secondly, given the PPG policy I quote above, it must have been, or should have been, obvious that the application and appeal should be supported by this information, as advised by government policy. Instead I fear that the appellants have little or no idea if any of their last-minute suggestions for foul drainage are practical on clay.
14. Mr Steedman submitted that, had the Council thought that drainage was a “deal-breaker,” then it should have been a reason for refusal. But reason for refusal no 1 refers to “drainage” and reason no 2 refers to septic tanks. Read sensibly, as a whole, the reasons for refusal make the Council’s concerns clear.
15. In reply to the Council’s application for costs, Mr Steedman examined the PPG on “what type of behaviour may give rise to a procedural award against an appellant” and stated that the appellants had not been uncooperative, had not caused delay, had not introduced evidence at a late stage that caused an adjournment, had not prolonged the proceedings, had completed a timely Statement of Common Ground and had attended the inquiry. He worked down the list of examples in the PPG at paragraph 052 (Ref ID 16-052-20140306).
16. This list is not exhaustive and I would argue that the appellants did introduce a fresh, or at least changed, element to their case, by the withdrawal of the visibility plan (although lacking any evidence to back up their interpretation of a dated highway authority consultation reply) and by the late introduction of foul drainage details, partially outside the application site edged red and lacking in the level of detail required by government PPG. They failed to clarify routes of walkways/boardwalks, how much spill-out space would be found around the caravans and thus left the Council and myself in the dark as to the actual loss of priority woodland habitat so that an informed decision could be made. While evidence submitted claims there would be a net increase in biodiversity through the scheme, no thought had been given to where tree re-planting might occur and much of the evidence was contradictory as to what, how and where.
17. Mr Steedman submitted that for the Council to argue that the appellants should not have pursued their appeal is unjust. The report to committee states that the issues are “finely balanced” hence it is not unreasonable for matters to be examined at inquiry. However, the reason stated for committee determination

¹ PPG 020 Ref ID: 34-020-20140306

is “at the request of Councillor Brown as the committee should debate the issues in this case which are very finely balanced”. From the phrase and the punctuation that seems to me to be Cllr Brown’s assessment, not the Council’s case or an officer’s view. Nothing in the main body of the report states that the issues are finely balanced; the case is set out and straightforward conclusions reached leading to a recommendation for refusal. I have seen reports to committee in other casework where the officer believes the matters to be finely balanced and puts recommendations in the alternative. This has not been done with this appeal.

18. I find the appellants have behaved unreasonably throughout the appeal and the Council has been put to unnecessary expense.

Costs Order

19. 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 Mr and Mrs R Lewis shall pay to South Derbyshire District Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Mr and Mrs R Lewis, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Gyllian D Grindey

Inspector