



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 Mr and Mrs R Lewis for a full award of costs against South Derbyshire District Council.
 - 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 six log cabin holiday letting units falling within the definition of caravans.
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Reasons

1. 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.
2. Mr Steedman argued that the Council had been aware of the appellants' intentions since the application was made. While claiming that the appellants caused delay, the real delay was awaiting the Council's assessment of their own arboricultural information. A meeting was held with the Planning Officer dealing with the application, but no progress was made and there was nothing to discuss as she stated she was waiting for the arboricultural report the Council had commissioned – the Morfe Valley report.
3. When it arrived (21 May 2018), the appellants had little opportunity to respond as the application was heading for the committee (5 June 2018). The appellants consider that the only opportunity to debate the case, based on the reasons for refusal, is at the inquiry and the issues relating to the appeal were not flushed out until the proofs of evidence were received and meetings were held between the technical experts following the Pre Inquiry Meeting (PIM) and prior to the Statement of Common Ground being agreed.
4. The appellants have had no alternative but to proceed with an appeal because there had been no indication that the Council would change their position. The Council has behaved unreasonably in taking the appellants to this stage.
5. Firstly, I think it is clear that the Council was not aware of the appellants' intentions, that has been a problem all along. Like me they have been struggling to understand the nature of the proposals and obviously had so little trust in the arboricultural report supplied with the application that they

commissioned their own report – an unusual step for a Council in my experience.

6. The application is dated 21 July 2017; it is clear from consultation replies in CD1.21 that the normal consultations were undertaken and responded to in the later half of that year. These replies provide interesting reading. The consultation replies point out that the appellants own arboricultural report does not even mention that the woodland is a deciduous woodland priority habitat, I am not surprised the Council commissioned one of their own.
7. Other consultation replies indicate that “further consideration needs to be given to how the increased levels of human disturbance will be controlled and minimised through areas of non-intervention within the woodland”. And further down the same email, of 6 October 2017, Mr Taylor states “no specific measures have been provided in the supporting information to address [the issue of disturbance]. “insufficient information has been provided to....” As the email from Mr Taylor to Mr Lewis and Sarah Arbon dated 7 December 2017 states. Sarah Arbon writes on the same day that: “In order to establish if there would be any loss of hedgerow I requested...”. It is clear that the Council was not aware of the intentions of the appellants and suffered from the same lack of information as was apparent still at the appeal. These documents list the lack of information. Since one of these emails is to Mr Lewis it is not quite accurate to say that there had been no discussions and no opportunity to debate the case with the Council.
8. I find it incorrect to argue that an appeal had to be lodged because there was no indication that the Council would change their stance. I find that the Council did the best they could with the information they had when they gave it their formal consideration. The reasons for refusal refer to the need for “**details**” and “**how**” the access surface and foul drainage might work. They state that mitigation details have “**not been supplied**”. When the appeal was lodged and I read the file I decided a PIM might give some focus on exactly the areas of dispute between the parties, although, in the event I was still asking very similar questions and for the proposals to be fleshed out at the inquiry.
9. During the appeal the proceedings the Council had to deal with the same lack of information, or conflicting information, (and the appellants changing the nature of their case) as I have set out in the other costs decision. Again, I find that they dealt with the behaviour reasonably, effectively and with no delay or request for adjournment.
10. I consider that unreasonable behaviour, resulting in unnecessary expense as described in the PPG has not been demonstrated and I therefore conclude that an award of costs is not justified.

Decision

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

Gillian D Grindex

Inspector