



Costs Decision

Hearing Held on 24 July 2019

Site visit made on 24 July 2019

by Rory Cridland LLB(Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13 August 2019

Costs application in relation to Appeal Ref: APP/Y3940/W/18/3215416 Valley View, Dean Road, East Grimstead, Sculsbury SP5 3SD

- 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 Ms Nicola Terry for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of land for the stationing of one mobile home, one touring caravan, and a day/utility room building for residential purposes together with the formation of hard standing, and landscaping and erection of Max 2.8m fence and stables.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

The submissions for Ms Nicola Terry

2. The application for costs was made in writing prior to the hearing. It is not therefore necessary to repeat the appellant's case in any detail. Nevertheless, the appellant essentially argues that the Council has failed to substantiate its reasons for refusal, has failed to determine similar cases in a consistent manner and has prevented or delayed development which, having regard to its accordance with the development plan, national policy and other material considerations should clearly have been permitted.
3. In addition, the appellant made oral submissions at the hearing which drew attention to the fact that there was no one present from the Council's Strategic Planning Committee (SPC) to explain why members had reached the conclusions they had. Furthermore, it was argued that members of the SPC had misunderstood or misinterpreted the development plan and national guidance and had ignored the conclusions of the Inspector on the neighbouring site, Dillon's Farm.

The response by Wiltshire Council

4. The Council's response was also made in writing prior to the hearing. In summary, the Council disputes that it has acted unreasonably or failed to substantiate its reasons for refusal. Furthermore, it argues that it has not prevented or delayed development which should clearly have been permitted and argues that it has determined the application in a reasonable manner,

taking account of the development plan, national policy and all relevant material considerations.

Reasons

5. The Planning Practice Guidance ("the 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 or wasted expense in the appeal process. Furthermore, it indicates that Local Planning Authorities will be at risk of an award of costs being made against them if, amongst other things: (i) they fail to produce evidence to substantiate each reason for refusal on appeal; (ii) they fail to determine similar cases in a consistent manner; or (iii) where they delay development which, having regard to its accordance with the development plan, national policy and any other material considerations should clearly be permitted.
6. A single reason for refusal was set out in the Council's decision notice; that being a failure to accord with the requirements of Core Policy 47 of the Wiltshire Core Strategy (WCS)¹. However, in formulating its reason for refusal the Council pointed to four distinct criteria set out in that policy which they considered the application failed to meet.
7. My decision makes clear that I do not agree with the Council on any aspect. However, their concerns regarding landscape impact are matters of judgement and members are entitled to reach their own conclusions. Furthermore, I acknowledge that the lack of footway and street lighting would pose some, albeit small, risk to pedestrians seeking access to the site. I do not therefore consider the Council has acted unreasonably in raising these matters.
8. Nevertheless, the same cannot be said of the Council's other concerns. The Council's officers concluded that the site was in a sustainable location and provided reasonable access to services and facilities. This accords with the conclusions of the Inspector in an appeal on the neighbouring site, Dillon's Farm². While the Council is not required to follow the advice of its professional officers, and each case should be considered on its own merits, if a different decision is reached by members, the Council has to demonstrate, on planning grounds, why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
9. In the present case, little evidence has been put forward by the Council to support the concerns raised in relation to location. No detailed arguments have been advanced which would explain why members took a different view to their officer's or why the Council considered this site was materially different in terms of its access to services and facilities to the neighbouring Dillon's Farm site or the other infill development permitted by WCS Core Policy CS2. In failing to address these matters as part of the appeal, I consider the Council has acted unreasonably.
10. Similarly, when considering whether the scale and character of nearby settlements would be affected, the Council's argument was centred around the effect that the development had on East Grimstead when taken cumulatively with other existing gypsy and traveller sites located nearby. However, while both the PPTS and WCS Core Policy 47 require regard to be had to the impact

¹ Adopted 2015.

² APP/Y3940/A/14/2211452.

of such developments on nearby settlements, this does not include an assessment of the cumulative impact on existing settlements with other sites that already form part of the local community. While I acknowledge that the cumulative impact may be a valid consideration in cases where numbers are large, the Council acknowledged at the hearing that other pitches near to East Grimstead are few in number. It appears to me that the Council has imposed further requirements into criteria (viii) of WCS Core Policy 47 and the PPTS which are not supported by those policies or the present circumstances. This is a further example of unreasonable behaviour on the part of the Council.

11. Accordingly, even though I accept that in raising concerns in relation to the effect on the landscape and pedestrian safety, the Council has not acted unreasonably, it has nevertheless failed to substantiate its concerns in relation to location and the effect of the proposal on East Grimstead. Furthermore, in failing to address the conclusions of the Inspector in the neighbouring Dillon's Farm appeal, it has failed to determine matters consistently and in line with local and national policy. These are the sorts of unreasonable behavior which the costs regime is intended to discourage as, in this case, they result in the appellant having incurred wasted expense in having to appeal the decision.
12. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the Council's reason for refusal in so far as it relates to location and the effect of the proposal on East Grimstead, (including cumulative impact) is justified.

Costs Order

13. 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 Wiltshire Council shall pay to Ms Nicola Terry the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's reason for refusal in so far as it relates to location and the effect of the proposal on East Grimstead, including cumulative impact.
14. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Rory Cridland

INSPECTOR