



Costs Decision

Hearings Held on 11 and 25 June 2019

Site visit made on 25 June 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Costs application in relation to Appeal Ref: APP/R0660/W/19/3223623 Land to the rear of 12 Cemetery Road, Weston CW2 5LQ

- 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 Mr Michael Stokes for a full award of costs against Cheshire East Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the use of land for the stationing of caravans for residential purposes for one family gypsy pitch together with formation of hardstanding and ancillary utility/day room, and the retention of the existing permitted stables.
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Decision

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

The submissions for Mr Michael Stokes

2. The application for costs was made orally at the Hearing and is summarised below. The appellant's application relates to the local planning authority's behaviour with regard to the substance of the matter under appeal, as set out in the Planning Practice Guidance¹ (the Guidance).
3. The appellant's primary case is that the proposal accords with the development plan. If the Inspector concludes the same, given that this is the advice that Council Officer's gave to Councillors, then the Councillors have behaved unreasonably in refusing development which should be permitted. The Council has failed to take account of the weighted balance of paragraph 11 of the National Planning Policy Framework (the Framework) as well as national policy in the Planning Policy for Traveller Sites (PPTS) and other material considerations.
4. This was compounded at appeal by a complete absence of any reference to, let alone consideration of, relevant material considerations even though the Council has had the appellant's evidence for a couple of months. There is no evidence before the Inspector that the Council even considered material considerations as required by the PPTS or by S.38(6) of the Town and Country Planning Act 1990.
5. The above is compounded by the failure to provide evidence for each reason for refusal. This particularly relates to the second reason for refusal with

¹ Paragraph: 049 Reference ID: 16-049-20140306

regards to amenity where the case relates to a material increase in traffic without evidence to support this. The TRICS database shows that movements from the existing stables would be 4 movements per day whereas a gypsy pitch with stables would be 6 movements per day. There is no evidence of a material increase.

6. The Council's case is also based on vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. This is shown above in respect of residential amenity. Similarly, in respect of the effect on the Green Gap they say it will have an impact but do not explain why.
7. The Council has acted unreasonably in refusing the application and has palpably failed to substantiate their case on appeal. The appellant has been put to the cost of a wholly unnecessary appeal and therefore full costs of the appeal are sought.

The Response by Cheshire East Council

8. There is no claim in relation to procedural grounds. But in the way the application was dealt with, the Councillors did not make the Decision lightly. As part of the consideration of the application a site visit was made by Members who also raised questions which required further information. At a second committee meeting the decision was made after a lengthy debate where the appellant was represented.
9. This is not a straightforward case as demonstrated by the length of the Hearing. Members are entitled to make their decision and they did so properly based on a considered judgement.
10. With regards to paragraph 11 of the Framework the Council's view is that it does not apply in this case as it relates to the 5 year supply of housing land in general.
11. With regards to material considerations, the Statement of Case submitted with the appeal goes into great detail on issues which the appellant feels are relevant. But, based on the Committee report and reasons for refusal, these are not important material considerations in the Council's view. The Council confined its statement on planning policy and the reasons for refusal and did not wish to introduce other matters which did not lead to the refusal of planning permission.
12. It is incorrect that the Council did not consider the PPTS as this is referred to in the Committee report. A significant length of time was spent during the Hearing discussing matters which did not figure in the reasons for refusal, including a lengthy debate on the boundary of the conservation area. The material considerations we have focussed on in the appeal statement are closely aligned to the list of main issues.
13. With regards to a failure to provide evidence and the Council's case in respect of amenity grounds and access, the Council's Highways Officer initially recommended refusal but this was withdrawn following a site meeting. Therefore, there is evidence following consideration of the application and the comments of Highways that the application would involve an increase in traffic using the site.

14. With regards to vague, generalised or inaccurate assertions both the amenity and green gap issues are matters that can be best assessed by a site visit as has been indicated during the Hearing. The Council has given whatever information it can in advance of the site visit in relation to the width of the access and the windows that open on to it. In terms of the Green Gap we have supplied specific measurements in our Statement.
15. We therefore consider that there are no grounds of unreasonable behaviour.

The Response for Mr Michael Stokes

16. This is a simple case, although the Council says it's not straightforward.
17. This shows a lack of capability within the Council to assess or determine land use applications characterised by off the cuff assertions made by the Policy witness, but repeated here, that the Council's view that the absence of a 5-year supply of gypsy and traveller sites does not trigger the weighted balance. That is plainly contrary to the case law of *Wenman*².
18. A lot of reference has been made to the Committee deciding the reasons for refusal and the Council only dealing with them as relevant matters. Lots of evidence was submitted which the Council did not consider was relevant. The PPTS sets out some of the material considerations which have not been addressed. Therefore, the Council thinks it knows better than the government.
19. But, secondly, anything is capable of being a material consideration as shown by the Courts and, if raised by the appellants, then the Council should deal with them.
20. The Council make reference to a Highways Officer who withdrew his objections and say there is a material increase in traffic movements. This is not set down in the Council's case and furthermore an *increase* is not the test as it needs to be a *material increase* before you consider impact. The Highways Officer withdrew the objection on the grounds that there would be no material increase in vehicle movements. Therefore the Council's response does not defend the costs application but merely draws attention to the inadequacies of the Council's approach to this appeal and we reiterate that a full award of costs is justified.

Reasons

21. The 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.
22. With regards to preventing or delaying development which should clearly be permitted, I have concluded in my appeal decision that the proposal does not conflict with development plan policy. I acknowledge that the assessment of the effect on the Green Gap is, to an extent, a matter of judgement and that the proposal would lead to development in this sensitive location. That said, the level of harm at worst is only limited. The appellant has clearly set out a range of other considerations which weigh in favour of the proposal and the Council has not provided substantive evidence as to why these do not outweigh

² Mr Mark Wenman v Secretary of State for Communities and Local Government and Waverley Borough Council [2015] EWHC 925

any potential conflict with planning policy. This is of particular importance in the light of the Council's acknowledged need for gypsy and traveller provision.

23. Furthermore, with regard to the second reason for refusal on amenity grounds, the Council has not substantiated how the traffic generated from the proposal would lead to material harm to the living conditions of residents along the access route. The minimal increase in the volume and nature of traffic which may be generated by the proposal does not in itself demonstrate material harm to residents which would warrant the refusal of planning permission.
24. I conclude that it was unreasonable of the Council to have refused planning permission, with the result that the applicant has directly incurred unnecessary and wasted expense in submitting his appeal. Having regard to the provisions of the Guidance, a full award of costs is therefore justified.

Costs Order

25. 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 Cheshire East Council shall pay to Mr Michael Stokes, 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.
26. The applicant is now invited to submit to Cheshire East 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.

David Cross

INSPECTOR