The Planning Inspectorate

Costs Decision

Hearing held on 13 August 2019
Site visit made on 13 August 2019

by A Blicq BSc (Hons) MA CMLI

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

Decision date: 12 September 2019

Costs application in relation to Appeal A - Ref: APP/L3815/W/18/3209147 Land at junction Keynor Lane and Selsey Road, Keynor Lane, Sidlesham, Chichester PO20 7NG

- 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 Messrs W Hughes and Messrs M Goddard for a full award of costs against Chichester District Council.
- The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for: Change of use of land from agricultural land for stationing of caravans for residential purposes by 3 gypsy-traveller families with facilitating development (utility buildings, hardstanding, widened gateway, septic tank and landscaping).

Costs application in relation to Appeal B - Ref: APP/L3815/W/18/3209145 Land at junction Keynor Lane and Selsey Road, Sidlesham, West Sussex

- 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 Messrs W Hughes and Messrs M Goddard for a full award of costs against Chichester District Council.
- The hearing was in connection with an appeal against the refusal of the Council to grant permission for: Change of use of land from agricultural land for stationing of caravans for residential purposes by 3 gypsy-traveller families with associated utility buildings, hardstanding, widened gateway, septic tank and landscaping.

Decision

1. The applications for awards of costs are allowed in the terms set out below.

The submissions for Messrs W Hughes and M Goddard

2. A written costs application was submitted in advance of the hearing, with key points outlined orally. The applicants argued that the costs applications were for a substantive award. Planning Practice Guidance (PPG) sets out that this can include preventing or delaying development which should clearly be permitted having regard to the national and local policy or guidance, and other material considerations, and failure to produce evidence to substantiate each reason for refusal at appeal. The application advanced the following arguments:

(i) That the Council has misapplied national guidance, and has failed to justify why the developments would not meet the criteria set out in Policy 36 of the Local Plan (LP);

(ii) That the Council has failed to give weight to evidence in respect of the need for gypsy sites in the area, and whether reasonable alternatives are available,

(iii) That the Council has failed to give due consideration to whether appropriate conditions, including temporary permission, could address their concerns, and

(iv) That the Council has failed to give adequate weight to the personal circumstances of the appellants and their families, including the best interests of children.

The response by Chichester District Council

3. A written response was submitted in advance of the hearing and the key points were outlined orally. These are set out in my reasoning below.

Procedural Matter

4. These appeals were concerned with two developments on different parts of the same field. The two appeals have been considered in one decision notice and it is appropriate to take the same approach here to avoid duplication. Where the evidence before me differs I have identified the appeal to which I am referring.

Reasons

5. Paragraph 030[1] of the PPG advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

National guidance and local policies

6. The applicants applied for change of use of agricultural land for use as gypsy pitches on a field within the dispersed settlement of Sidlesham. The Council refused permission for both appeals on the basis that the sites were within a countryside location as defined by Local Plan (LP) policies and Planning Policy for Traveller Sites (PPTS). The Council also argued that PPTS allows councils to determine what constitutes a settlement according to their development plan.

7. PPTS does not distinguish between the term settlement as used in a council's settlement strategy, and the normal meaning of the word. Nor is there anything in PPTS to suggest that councils have the discretion to define what is or is not a settlement. In my reasoning I have concluded that it is a matter of fact and degree that the appeal site lies within a settlement.

8. As such, although I agree that the developments would be contrary to LP policies that limit development outside designated settlements, I disagree that the developments would be contrary to guidance given in PPTS in this regard. Moreover, the officer's reports state that *gypsy uses by nature tend to be located in more rural settings*. Despite the officers' recognition that these

[1] Reference ID: 16-030-20140306

types of use may not be appropriate in more densely populated areas, which seem to be those designated as settlements in local policies, the Council has given weight to the argument that the sites fall outside settlement boundaries. In this regard the Council has misapplied national guidance.

9. Moreover, those policies that restrict development outside designated settlements would not apply if the developments met the criteria for LP Policy 36, which is concerned with gypsy and traveller sites.

10. The officers' reports for both appeals work through an assessment of the application against LP Policy 36 and found that neither application met the criteria. However, in addition to what is set out above, I have outlined in my decision why I consider these assessments failed to accurately apply the policy with regard to the development's relationship to settlements and local services.

11. In addition, the Council found harm in relation to visual amenity and lack of boundary screening, leading to a loss of privacy for future and existing occupiers. However, given the locations of existing dwellings from the sites, together with existing mature vegetation, it is unclear to me why existing occupiers would be significantly overlooked and thus experience a loss of privacy. Nor are such existing occupiers identified in the reports. The reports also refer to the section on the character and appearance of the area in this regard, but character and appearance is not mentioned in LP Policy 36.

12. Moreover, given that the assessments conclude that there would be insufficient levels of privacy, whether justified or not, I would expect the reports to give some consideration to be given to whether mitigation measures, in addition to the planting shown on the drawings, were a practicable option.

13. With regard to the historic environment, I have concluded in my decisions that the Council's evidence is both inaccurate and unsubstantiated, and fails to follow the guidelines set out in Paragraph 190 of the National Planning Policy Framework (the Framework). This requires councils to identify and assess the particular significance of any heritage asset that may be affected by a proposal. The officers' reports conclude that both developments would change the setting of the nearby listed building from a rural to an urban setting but fail to explain or justify why this fails to preserve or enhance the listed building's significance.

14. As such, I conclude that the Council's assessment of both developments against LP Policy 36 failed to apply the correct tests, or was vague and unsubstantiated. It has failed to show why the applications would not meet the criteria set out LP Policy36.

The local need for gypsy sites

15. The Council argues that as there is no unmet need for sites, the harm identified in relation to the applications' location and impact on the landscape and historic environment removes any requirement to give material weight to need.

16. The Council has granted permission for a significant number of windfall sites since 2012 and there is nothing before me to suggest that the figures for new pitches set out in LP Policy 36 are seen as a ceiling. Nonetheless, the Council relies on its 2012 survey results to argue that it has met its requirements and that in the context of the 2012 survey, has more than a five-year supply of sites. However, I have outlined in my decision that the weight of evidence before me in respect of need, taken collectively, suggests strongly that there is

unmet need and that the 2012 survey figures the Council is relying on are severely flawed. The permissions for windfall sites granted since 2012 already exceed the number required under LP Policy 36 for the period up to 2027.

17. Consequently, I have concluded that the Council's position is at best founded on data that is several years out of date, and that contradictory or more up to date data has not been given any weight. On the basis of the evidence before me, I find this position unreasonable and conclude that the Council should have given some consideration and weight to the apparent level of need in the area when assessing these applications. Moreover, I conclude that the Council cannot demonstrate an up to date five year supply of sites as required by PPTS.

18. The Council also argues that that the applicants have failed to show that alternative sites are available, or indeed why they could not relocate to Oxford which is where Mrs Goddard has been receiving long term health care. However, I saw no reason to disbelieve or give anything less than considerable weight to the applicants' evidence regarding their search for an alternative site since the unsuccessful appeal at Birdham in 2017. Moreover, given the families' links to the Chichester area I find it unreasonable that relocation to Oxford is even mentioned in the officers' reports.

19. The officer's report for Appeal B states that more gypsy pitches in Sidlesham would lead to this village have a disproportionate share, contrary to Paragraph 14 of PPTS. However, given that Sidlesham is the largest parish in the district it is unclear on what basis the officer has made this statement, which is therefore unsubstantiated.

20. I conclude that the Council has relied in its decision making on survey data that is clearly either flawed or has little current relevance. It has also entirely disregarded its own more recent survey data on the grounds that it has yet to be examined by an Inspector, and has chosen to ignore the conclusions reached in previous appeals in this regard. I find that in assessing the current need for sites, and in failing to acknowledge the weight of data that there is unmet need, the Council has acted unreasonably. As such the material weight required under PPTS was not applied to these applications.

Consideration of conditions

21. PPTS sets out that councils should consider how they could overcome planning objections by the use of conditions or obligations.

22. The descriptions of the site as set out in the Council's evidence with regard to openness and rural context do not, in my opinion, reflect the true situation. Moreover, there is very little indication that potential mitigation through conditions were considered in relation to character and appearance in either of the applications. The Council argues in its statement that mitigation was considered at application stage but the evidence before me suggests otherwise. I conclude that this, together with a reliance on flawed arguments, is contrary to guidance in PPG.

23. Moreover, despite outlining the health issues of one family member, and the educational needs of the children, there is nothing in the officers' reports to indicate that any consideration was given to the merits of a temporary or personal condition, or to demonstrate that these issues were included in the

overall planning balance. This is contrary to the provisions of both PPTS and human rights legislation. The Council argues that this position was taken as a consequence of having sufficient supply of land for gypsy pitches and that temporary permissions would not overcome the harm identified. However, there is nothing before me to suggest that any consideration was given to whether the education and health needs of individuals might be accommodated by a temporary or even a personal permission, and whether these might carry any weight in favour of the applications.

24. In any case, there is nothing in PPTS to suggest that temporary occupancy or personal conditions should only be considered in situations where councils cannot demonstrate a five-year supply of sites. I conclude that there was a failure to consider whether conditions could mitigate the planning harm and that this represents unreasonable behaviour on the part of the Council.

Personal circumstances

25. The officers' reports and the Council's statement state that the applicants have not demonstrated that alternative accommodation costs in Oxford, where Mrs Goddard has received medical care, are prohibitive. However, given the applicants' known and long-standing familial links to the Chichester area, this seems to me to be an unreasonable argument even if the costs were not determinative.

26. The officer's report for Appeal A states that the direct conflict with local policies and national legislation for heritage assets *would outweigh the need for the children to live on this particular site for their fixed abode and education*. There is no indication that the officer has considered whether the best interests of the children should be a primary consideration in decision making, as required by Article 3 of UNCRC[2], or the weight to be attributed to planning harm and how this outweighs personal circumstances. Nor is there any indication that the health needs of Mrs Goddard have been attributed any weight or included in the overall planning balance.

27. For Appeal B, the officer's report states a child's interest is not determinative and may be outweighed by the cumulative effect of other considerations. The report states only *the need for the applicants to reside on this particular site has not been demonstrated as sufficient to override other planning considerations and is therefore contrary to PPTS.* I agree with the applicants that that statement is insufficient to show what weight was given to the applicants' personal circumstances and how this would be insufficient to outweigh the planning harm.

Conclusion

28. I have found that the Council's arguments lack clarity or a firm basis in either local policies or national guidance. In particular, it has misapplied national guidance and its own permissive policy for gypsy sites, has based its arguments on vague, inaccurate and unsubstantiated evidence and has failed to show that sufficient weight has been given to personal circumstances and the best interests of the child.

[2] United Nations Convention on the Rights of the Child

29. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as set out in PPG has been demonstrated for both appeals and that an award of costs is justified for both appeals.

Costs Order

30. 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 power in that regard, IT IS HEREBY ORDERED that Chichester District Council shall pay to Messrs W Hughes and M Goddard the costs of the appeal proceedings described in the heading of this decision.

31. The applicants are now invited to submit to Chichester District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an 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.

A Blicq

INSPECTOR