
Costs Decisions

Hearing Held on 14 August 2019

Site visit made on 14 August 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 7 October 2019

Costs application in relation to Appeal Ref: APP/E2205/W/18/3209012 Lot 3, Gilham Farm, Luckhurst Lane, Smarden TN27 8QW

- 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 Peter Hare for a full award of costs against Ashford Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for no.4 loose box stables replacement for the stables previously approved APP/E2205/A/07/2035649.
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- 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 Peter Hare for a full award of costs against Ashford Borough Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the use of land for the stationing of caravans for residential purposes together with additional hardstanding and dayroom ancillary to that use.
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Decision Appeal A

1. I allow the application for an award of costs in the terms set out below.

Decision Appeal B

2. I allow the application for an award of costs in the terms set out below.

The Submissions for Mr Peter Hare

Appeal A – refusal of the application for stables

3. This is an application for a full award of costs as an unreasonable refusal of permission has led to unnecessary expense in an appeal that should not have been required. Reference is made to 5 of the bullet points in Paragraph 049 Reference ID: 16-049-20140306 of the Planning Practice Guidance as follows;
 4. Bullet point 1, *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations*. The extant planning permission for similar stables is a material consideration, Officers recommended approval and the previous appeal decision is a material consideration.
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5. Bullet Point 2, *failure to produce evidence to substantiate each reason for refusal on appeal*. There were 2 reasons for refusal and that concerning the effect on the character and appearance of the area has not been substantiated, there has been no change in the surroundings. The second reason on welfare issues was not considered by the previous Inspector and the Supplementary Planning Document does not prevent stables being away from the dwelling.
6. Bullet Point 3, *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis*. As above.
7. Bullet point 6, *persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable*. An Inspector had granted permission for similar stables.
8. Bullet Point 8, *failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances*. The use of the land is extant and there have been no material changes in circumstances following the loss of the previously permitted stables.

Appeal B – failure to determine the application for residential use

9. This is an application for a full award of costs over the failure to determine the application and reference is made to Guidance Paragraph 048 Reference ID: 16-048-20140306, *if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period*. The Council have done the second but not the first, not having explained why a decision was not reached.
10. The Officer's Report states that no evidence had been submitted to demonstrate the applicant's gypsy status, but this is factually incorrect, as information was given in the appendices to the appellant's letter of 16 November 2017. In addition there is no need to prove gypsy status in order to obtain planning permission and this should not have been a reason for non-determination of the application.
11. On personal circumstances, the Report's finding that no weight can be afforded the information because it was not able to be made public is wrong as a matter of law. The Council is bound by the Children's Act and the General Data Protection Regulation, and other Councils take information but anonymise it in the Report, not naming the site of schools, but this Council ignored the information that was given.
12. The Council failed to consider paragraph 11d of the National Planning Policy Framework in the Report and did not make reference to the best interests of the children, which is a statutory duty on the Council. The Report considered the harm but not any issues on the other side of the balance.
13. As a result, and with reference to the bullet points in Guidance Paragraph 049 Reference ID: 16-049-20140306, the Council prevented development which should clearly have been permitted having regard to other material considerations as the first bullet point and acted contrary to, or did not follow,

establish case law as the fifth bullet point. A full award of costs is justified as there were no adequate reasons for not determining the application and insufficient regard was had to other material considerations.

14. Following receipt of the Council's response, the appellant had the final word on the matter of Costs; Doc 7 in the accompanying Appeal Decision.

The Response by Ashford Borough Council

15. This is contained in the Council's letter, Doc 5 in the accompanying Appeal Decision.

Reasons

16. The Planning Practice Guidance advises that parties in planning appeals and other planning proceedings normally meet their own expenses, but that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs (Paragraph: 028 Reference ID: 16-028-20140306).
17. There has been comment as to the making of the Costs Application. The Guidance states that in the case of Hearings, all costs applications must be formally made to the Inspector before the hearing is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing (Paragraph: 035 Reference ID: 16-035-20140306). The appellants Costs Applications comply with this requirement, albeit not the 'matter of good practice'. Often, applications are only made after the merits of the case have been aired at the Hearing, and that is permissible. In those situation, Inspectors make careful notes of the Application as it is made and include that in their Costs Decisions.

Appeal A – refusal of the application for stables

18. The previous grant of permission should have been a significant material consideration in favour of the grant of permission for replacement, and there has not been such a change in policy as to warrant refusal for such a similar proposal. The adoption of the Supplementary Planning Document '*Stables, Arenas and Horse Related Development*' in October 2014 with its reference to an 'ideal' situation of the stables being close to the dwelling of the carer would not prevent the grant of permission in this case, as clearly an 'ideal' situation must permit other, acceptable but less than 'ideal', proposals.
19. The Council's refusal to permit the replacement stables against the advice of the Officers was not based on proper policy and planning grounds and the evidence presented to the Appeal, whilst a matter of judgement as to the effect, failed to show material changes to the character and appearance of the area or policy since the previous grant of permission.
20. The Guidance lists types of behaviour that may give rise to a substantive award of costs against a local planning authority and in this case the Council persisted in objections to a scheme or elements of a scheme which an Inspector had previously indicated to be acceptable; failed to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances, and failed to produce evidence to substantiate each reason for refusal on appeal.

That finding acknowledges the extant use of the land for the keeping of horses and the fact that the change in policy and guidance did not insist on permission being refused (Paragraph: 049 Reference ID: 16-049-20140306).

21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified in Appeal A.

Appeal B – failure to determine the application for residential use

22. As set out in Guidance paragraph 048 Reference ID: 16-048-20140306 quoted in the appellant's Costs Application, an award of costs may be given in a failure to determine case if there are no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
23. The Council appear to have attached little or no weight to the evidence given during the course of the application as to gypsy status and the personal circumstances of the family including the best interest of the children. Whilst there are matters that should not be widely published, that should not prevent the proper weighing of that sensitive information and its reporting in an anonymised or less detailed form. The subsequent agreement in the Statement of Common Ground to gypsy status could have been agreed earlier and during the application stage.
24. Acceptance and the proper weighing of this sensitive information would have been on the opposite side of the balance to the various matters that the Council did attach weight to in order to come to the conclusion that permission would not have been granted and to defend the appeal into non-determination.
25. However, had the Council reached that stage during their consideration of the application, there would have been a need for judgement as to how the balance rested, and that judgement should have taken account of the process in paragraph 11d of the Framework. The accompanying Appeal Decision has carried out that planning balance using judgement and having access to all of the sensitive information presented, and has found that the harm through a permanent permission would significantly outweigh the benefits. That would have been a conclusion rightly available to the Council and in the exercise of that judgement, the findings of the previous Inspector would have been a legitimate material consideration.
26. Similarly, whilst the accompanying Appeal Decision has concluded that the revised balance in the case of a temporary permission is sufficiently changed as to allow the Appeal on that basis, it would not have been unreasonable behaviour on the part of the Council had that revised balance led to the conclusion that the harm would still significantly outweigh the benefits; that would again be a matter of judgement. The evidence is however that due to not feeling able to attach weight to gypsy status and the personal circumstances of the appellant and his family, the Council did not proceed to that stage.
27. To conclude, whilst the Council failed to determine the application, it is not certain that the appeal would have been avoided altogether. But, by not attaching weight to the sensitive information, the appellant had been put to the unnecessary expense of providing evidence at appeal on that subject. I

therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated, but only with regard to the handling of sensitive information and the need to address this at appeal, and hence only a partial award of costs is justified in Appeal B.

Costs Order Appeal A

28. 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 Ashford Borough Council shall pay to Mr Peter Hare, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed.
29. The applicant is now invited to submit to Ashford Borough 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.

Costs Order Appeal A

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 powers in that behalf, IT IS HEREBY ORDERED that Ashford Borough Council shall pay to Mr Peter Hare, the costs of the appeal proceedings limited to those costs incurred in respect of the handling of sensitive information; such costs to be assessed in the Senior Courts Costs Office if not agreed.
31. The applicant is now invited to submit to Ashford Borough 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.

S J Papworth

INSPECTOR