



Costs Decision

Hearing Held on 8 October 2019

Site visit made on 8 October 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2019

Costs application in relation to Appeal Ref: APP/X0360/W/19/3219847 Land adjacent to Cartref Farm, Islandstone Lane, Hurst, Wokingham, Reading RG10 0RU

- 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 and Mrs Henry and Samantha Giles for a full award of costs against Wokingham Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission to vary conditions 4 (approved plans) and 5 (number of caravans on site) of planning consent 153360 to increase the number of caravans on site from 2 caravans to 4 (no more than 2 being static caravans), thereby increasing the number of gypsy pitches from 1 to 2.
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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 and Mrs Henry and Samantha Giles

2. Sir, I need to meet three tests, one is that it is a timely submission as I am giving you an application now. There has also been unreasonable behaviour, and the third is that it has led to costs as the appeal should never have been necessary. The application seeks a substantive award and I refer to bullet points 1, 2, 3 and 4 from Paragraph: 049 Reference ID: 16-049-20140306 of the Planning Practice Guidance (the Guidance) which say:
 - 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.
 - failure to produce evidence to substantiate each reason for refusal on appeal.
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.
3. In terms of bullet points 1 and 2, this is not a material change of use, except for the stables and pitch this is not operational development, merely an operation as a result of caravans. As a result, there is no conflict with the

development plan or national policy as the principle of development has already been established. The reason for refusal related to character and appearance and the street scene. The Council has failed to substantiate the reason for refusal as despite putting written evidence in, they have failed to address the effect of caravans. If there is no material change of use, then there is no material change in the character of that use. Secondly their evidence relies on a series of glimpsed views of the site and even if I had any sympathy with the Council about the impact, those are all capable of being dealt with by a landscaping scheme.

4. In terms of bullet point 3, in accepting there was no material change of use, the Council have tried to go on and explain the effect, but that doesn't stand up to scrutiny.
5. With respect to bullet point 4, if the Inspector were to find that a condition was needed then costs should be awarded still as a condition could have been attached and planning permission passed. The Council could have granted planning permission and conditioned to address their concerns. The Council Officers recommended planning permission be granted and a landscape scheme conditioned, but the Planning Committee refused the scheme on its impact on the street scene and the character and appearance of the area. The landscape scheme which would have addressed the very reason to refuse planning permission and hence, my client has been put to a wholly unnecessary appeal. I would draw your attention to the Officers Report to the Committee and the landscape condition that was before them before they reached their decision.

The response by Wokingham Borough Council

6. Our view is that it is a subjective matter as to whether the proposals affect the character and appearance of the area. With respects to the comments on the conditions, it is to what extent the landscape condition could mitigate against the proposals and the time it would take the landscaping to establish. I think it was said at the Planning Committee by the applicants that character and appearance was one consideration and it is not unreasonable for members to take their own view on the effect on the character and appearance of the area. Can we just add to that it wasn't a Planning Committee that hadn't been to the site – they had been to the site and it was clear that a landscaping condition wouldn't be sufficient. There is nothing that Members said in the reason for refusal that was unreasonable and it is a reasonable view that they had. You will see when you go to the site that as you get to the bend the trees are in part very sparse and there is a natural character to that junction.

The response for Mr and Mrs Henry and Samantha Giles

7. You begin to say things that sounded like evidence as it's a costs application, so I am sure that the Inspector will disregard that. It is said that Councillors effectively knew that landscaping wouldn't be enough, but that isn't enough. There is a single section in the Council's evidence which says that a landscape condition wasn't capable of mitigating – this wasn't evidence and it is not analysis. Not enough at all. And that is why when I put the four bullet points together and that is why there has been a failure to substantiate the case and why the reason cannot be mitigated. One would hope they did not, but there is no evidence of what landscaping could or could not work. There is no analysis in the Planning Committee minutes or evidence of this. I haven't got that case in front of me - it hasn't been made out.

Reasons

8. 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. In order to be successful, an application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Parties in the appeal process are normally expected to meet their own expenses. The Guidance also advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
9. In considering the scheme's effect on the character and appearance of the area and the street scene, a planning judgement was required. This led Council Officers to recommend the scheme for approval subject to planning conditions to the Planning Committee. However, the Planning Committee are not obliged to accept or agree with the recommendation put to them. The fact that the Planning Committee did not agree with their Officer's recommendation is not alone justification for an award of costs. However, the reasons for doing so, do need to stand up to scrutiny and be supported by robust objective evidence.
10. I understand that Members of the Planning Committee visited the area before reaching a decision. I have no doubt that the observations made during this visit formed part of Members subsequent planning judgement. Given that the Planning Committee found the scheme would cause harm to the character and appearance of the area, it was then incumbent on them to consider whether there were any planning conditions that would address that harm. A landscaping condition was recommended as part of the Officer's analysis, but this was not considered to mitigate the harm.
11. This is view that the Planning Committee were entitled to take. However, at appeal, the Council did need to substantiate its reason for refusal. The evidence provided particularly focussed on the effect of the stables. While, the applicants may disagree with that evidence, and even if I did not agree with the Council's view, it did flesh out the Council's reason and make precise comments on the proposal's effect in relation to Islandstone Lane. It was plain that some of the other concerns raised by the Council did not stand up to scrutiny. However, this does not change my view that the Council substantiated their case insofar as the proposal's effect on the character and appearance of the area. However, this only takes matter so far.
12. In my experience it is not unusual for planning conditions to be imposed on planning permissions to secure hard and soft landscape schemes. While there was no detailed scheme before the Council when they made their decision, and indeed there isn't one before me now, a planning condition could have been drafted so that details came forward of plant species, sizes, densities, and operations to help them establish and to ensure that they are replaced if they were removed, die or become seriously damaged or defective.
13. The Council conveyed their view that whilst landscaping could lessen the proposal's impact it would not alleviate the harm they identified on the character and appearance of the area and the street scene. This is a planning judgement, but there was little or no analysis to support this stance. Even at the Hearing, and prior to the application for an award of costs, the Council did

not go into any great depth to explain why further landscaping could not be capable of mitigating the development's effect. For instance, there was no analysis of existing landscaping along the lane and within the site, in terms of its height, extent or species or why, even if gaps were filled in, further planting would not help assimilate the development into its surroundings given the strong presence of landscaping on both sides of the lane near to the site.

14. The Guidance is clear that local planning authorities are at risk of an award of costs by refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. Given the lack of objective evidence insofar as a potential landscape scheme, and as I have found that this would overcome the limited harm that I identified to the character and appearance of the area, this is precisely what the Council have done by not producing evidence to substantiate their stance.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

16. 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 Wokingham Borough Council shall pay to Mr and Mrs Henry and Samantha Giles, 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.
17. The applicants are now invited to submit to Wokingham 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.

Andrew McGlone

INSPECTOR