



Costs Decision

Inquiry opened on 26 March 2019

Site visits made on 6 August 2019

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 8th November 2019

Costs application in relation to Appeal Ref: APP/C3105/W/18/3209349 Land south of Widnell Lane, Piddington, Bicester, Oxfordshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr H L Foster for a full award of costs against Cherwell District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development described as 'a material change of use of land to use as a residential caravan site for six gypsy families, each with two caravans, including improvement of the access and laying of hardstanding'.
 - The inquiry sat for six days: 26 March, 29-31 July, and 1 & 2 August 2019.
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Decision

1. The application for an award of costs is refused.

Procedural matter

2. The main parties agreed that the appeal proposal should be described as a material change of use of land to a residential gypsy site comprising six pitches, each with two caravans, including improvement of the access and the laying of hardstanding.

The submissions for Mr H L Foster

3. The application was made in writing¹. The gist of the submissions is as follows. A full or partial award of costs is sought against the Local Planning Authority (LPA) and/ or Piddington Parish Council. Reliance is placed on matters set out in the Appellant's closing submissions.
4. The LPA's reasons for refusal had relied on three matters relating to Policy BSC 6 of the Cherwell Local Plan 2011-2031 Part 1, but, at appeal stage, reference had also been made to criterion (h) which is concerned with the efficient and effective use of land. The LPA's argument was based on a misreading of paragraph 26 of Planning policy for traveller sites (PPTS). In respect of deliverability, the LPA relied upon material from the PC to support the reason for refusal, whereas the provision of utility services could be dealt with by means of a condition.
5. Insofar as access to facilities and services is concerned, the approach of Policy BSC 6 is consistent with paragraph 13 of PPTS, which makes no mention of

¹ Document A15, part 6.

distances or use of public transport. The LPA had failed to acknowledge that the opportunities to maximise sustainable transport opportunities will vary between urban and rural areas, as set out in paragraph 103 of the National Planning Policy Framework (NPPF). It had raised objections which were not supported by evidence: although the first reason for refusal referred to proximity to noise from Piddington Training Area, there was no evidence that significant harm would occur. Moreover, the LPA was inconsistent in not raising noise as a concern in respect of the proposal for a dwelling at Cowpastures Farm.

6. The inclusion of additional objections, which were misconceived, prolonged the proceedings. Time was also wasted on matters which were capable of being dealt with by condition. The LPA acted unreasonably in not following the officers' recommendation, and in delaying a development which should have been granted planning permission.

The response by Cherwell District Council

7. The response to the costs application was made in writing (Document L12). The gist of the response is as follows. The application for a partial award is considered to be meaningless, as no basis is advanced for apportionment. Although the application seeks a full award against the LPA and/ or the Parish Council, the Appellant cannot recover his full costs twice, and no basis is advanced for apportioning a full costs award between the two Councils. The application seeks to incorporate the Appellant's closing submissions, but it is not for the LPA to work out which of these are potentially relevant to the costs application. The application should be dismissed because of these serious deficiencies.
8. Members disagreed with the officers' advice concerning the site's sustainability and noise impact. Both are matters of judgement on which members could legitimately take a different view. Moreover the Appellant sought to obtain the noise measurement evidence which members considered was lacking. Evidence was produced to substantiate concerns in relation to sustainability, and it explained the deficiency in the Appellant's evidence on noise. No new reason for refusal was introduced.
9. Conditions must only be used where they are necessary to make development acceptable in planning terms. If the provision of utilities is inherently unsustainable on the grounds of costs and distance from networks, conditions requiring their provision would reinforce the beach of Policy BSC 6.
10. There was no unreasonable delay in granting planning permission: the proposal gave rise to issues which warranted investigation and scrutiny, as demonstrated by the length of the inquiry. Insofar as consistency is concerned, the LPA can only make its planning judgement based on the evidence it has, including consultation responses on a particular application. The Ministry of Defence (MoD) objected to the appeal proposal, but not to others in the area: where an objection was made it is evidence that the LPA had to consider, and which could provide a basis for refusing planning permission.
11. The Appellant's application, made at the latest possible stage in the proceedings, should be refused.

Reasons

12. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
13. In its evidence to the inquiry, the LPA argued that the development failed to comply with criterion (h) in Policy BSC 6. Whilst that specific point concerning the efficient and effective use of land is not included in either of the reasons for refusal, it formed part of the LPA's case that the appeal site was not a suitable or sustainable location for the proposal, an objection which was the subject of the first reason for refusal. Policy BSC 6 makes clear that the listed criteria (a) – (k) are to be considered in assessing the suitability of sites. In assessing criterion (h), the LPA explained that preference should be given to brownfield land, reflecting paragraph 26 of PPTS, and this is a view which it was entitled to put forward.
14. The LPA questioned whether utility services could be provided in a sustainable manner: whether utilities are able to be provided is part of criterion (i) in Policy BSC 6 and was a relevant consideration to be addressed in assessing the suitability of the appeal proposal. The site is part of an area of open land to the south side of Widnell Lane, and is some distance from existing electricity and water supply networks. Only limited information about these services was provided at application stage. The design and access statement simply asserted that both services were already connected to the site, although when advised of queries raised by the MoD, it was then stated that an application would be made for connection to the mains electricity supply². Piddington PC obtained some information from suppliers which indicated the distance from the existing network and estimates of connection costs. More detailed information from the Appellant was provided during the course of the inquiry, including an assurance from the adjacent landowner that water could be taken from his supply which runs to the fence to the west of the site boundary. The position concerning water and electricity supplies had been unclear prior to the inquiry, and it was not unreasonable for the LPA to raise an objection on this matter, rather than take the view that these matters could be satisfactorily resolved by the use of conditions. Although the LPA referred to information obtained by the PC, that was information relevant to the consideration of the proposal in relation to criterion (i). This is not a case where the LPA failed to put forward evidence to substantiate its concerns.
15. The other utility service considered in the appeal was foul drainage. The Appellant had proposed the use of septic tanks, whereas the Environment Agency had commented that connection to the main sewer was the preferred option and that small sewage treatment or package treatment plants would be more sustainable than septic tanks. Porosity tests undertaken for the Appellant gave a mean percolation value which was just inside the acceptable value for soakaway construction, and the results were accompanied by advice that an alternative system, such as a sewage treatment plant, should be used³. In these circumstances, although I have taken a different view, it was not unreasonable for the LPA to raise an objection rather than refer to the use of a condition.

² Email dated 16 November 2017 from Mr Brown to the LPA.

³ Letter dated 30 March 2017 from D W Clark Drainage Ltd to Mr R Foster.

16. Neither PPTS nor Policy BSC 6 specify maximum distances from gypsy sites to certain facilities and services. However the first part of Policy BSC 6 sets out a sequential approach in which first preference is given to sites within 3km of Banbury, Bicester or a Category A village, followed by sites within 3km of a Category B village and within reasonable walking distance of a regular bus service to Banbury, Bicester or a Category A village. Villages have been categorised on criteria including the number and range of services and facilities which they contain, a point acknowledged by the Appellant's planning witness who commented in his proof of evidence that *Bearing in mind that Banbury, Bicester and Category A villages are likely to contain GP and other health services, and schools, it may be assumed that sites located within 3km of these settlements will have reasonable accessibility to services and facilities.* In this case the appeal site is less than 3km from the Category A settlement of Arncott, but Arncott has only a limited range of facilities and services, which do not include a school or health facility. In that situation it was not inappropriate for the LPA to take the distance to these services into account in assessing whether the appeal site was in a sustainable location. Nor was it unreasonable for consideration to be given to the nature of the local bus service in considering this matter.
17. Insofar as noise is concerned, paragraph 30-009 of PPG explains that it is for the agent of change (in this case the Appellant) to clearly identify the effects of existing businesses (and other activities) that may cause a nuisance. Whilst efforts by the Appellant to carry out a noise survey when explosives were in use at Piddington Training Area proved unsuccessful, the LPA had received two communications from the MoD which raised concerns about the impact of noise from military training exercises on the occupants of caravans⁴. This evidence, presented by the LPA, explained its concern about the proximity of the site to the training area.
18. Planning permission was granted on appeal for an agricultural worker's dwelling at Cowpastures Farm, which is much closer than the appeal site to Piddington Training Area. The effect on the occupants of noise was not raised by the LPA in its report on the planning application, nor identified as an issue in the appeal decision⁵. However this proposal related to a livestock unit where temporary permission had already been granted for a dwelling, and where the main issue was whether there was an essential need for an agricultural worker to live at or near to the farm. Planning permission was also granted on appeal for a gypsy site at Murcott Road, Arncott, immediately to the west of Training Area South. However it appears that the MoD made no objection to this proposal, the site of which lies within Aylesbury Vale and not Cherwell, and (although the MoD's schedule of training exercises may include activity at Training Area South in addition to Piddington) there is no specific evidence about the nature and disposition of training exercises in that location. Planning permission has been granted for housing within Cherwell on a site at Murcott Road close to Training Area South. In this case, the MoD supported the planning application on the basis that it would improve the range of accommodation available to personnel at the depots around Arncott. It is a well-established principle that each proposal must be judged on its own merits. The circumstances relating to the proposed gypsy site on Widnell Lane are not the same as in these other cases, and the LPA was not inconsistent in its approach to the appeal proposal.

⁴ Document L2, Appendices 4 & 5.

⁵ The LPA's report is Document L7a, and the appeal decision is Document O6.

19. It is not unreasonable for a local planning authority to refuse planning permission contrary to the advice of its officers, provided that evidence is provided to substantiate its reasons for refusal. In this case the Local Planning Authority provided detailed evidence concerning accessibility to facilities and services and the work and cost involved in the provision of utilities in explaining its concern that the site was an unsuitable and unsustainable location for a gypsy site. It also made clear its concerns about the effect of noise from Piddington Training Area, drawing on the views of the MoD, and explained its criticisms of the Appellant's assessment of noise.

Conclusion

20. I conclude that Cherwell District Council has not behaved unreasonably in respect of the appeal proposal, and, therefore, that neither a full nor a partial award of costs is justified.

Richard Clegg

INSPECTOR