
Costs Decision

Inquiry held on 12, 13 & 14 November 2019

Site visit made on 14 November 2019

by Mr J P Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th January 2020

**Costs application in relation to Appeal Ref: APP/W1525/W/18/3217804
Land at the junction of Ongar Road West and Highwood Road, Writtle,
Chelmsford, Essex CM1 3NT**

- The application is made under sections 78 & 320 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
 - The application is made by Chelmsford City Council for a full award of costs against Mr J Lee.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the change of use of land to 4 Gypsy/Traveller pitches comprising 4 mobile homes, 4 touring caravans, hardstanding and associated works.
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Decision

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

The submissions for Chelmsford City Council

2. Mr Lee has acted unreasonably in the case he has advanced, as is apparent by it failing to reflect or accord with
 - a) the clear starting point provided by the *Planning Policy for Traveller Sites* (PPTS);
 - b) the provisions of the adopted and emerging development plans that mitigate against development on Green Belt land; and
 - c) the clear findings of the High Court concerning matters such as the ability of Mr Lee and his family to find alternative sites, and the lack of evidence to displace those findings.
3. Moreover, his advocate provided an unbalanced summary of issues in the closing comments, while there was a late and unreasonable challenge to Mr Jarman's evidence around need.
4. These unreasonable actions have resulted in unnecessary expense being incurred in the appeal, and so a full award of costs is sought.

The response by Mr J Lee

5. In the High Court the Judge was deciding a different matter to a planning appeal, and allowed the Order so the Inspector could consider the planning merits of the case.

6. Concerning those merits, many Inspectors have found the *Gypsy and Traveller Accommodation Assessment* provides a minimum rather than a maximum provision. Moreover, exploring the mathematics of the supply was a reasonable course of action, especially as Mr Jarman has said that a 25% assumption for the 'unknowns' is appropriate.
7. Mindful that the case concerns members of an ethnic minority, it was not unreasonable for the appeal to be pursued.
8. An award of costs is therefore not justified.

Inspector's Reasons

9. The *Planning Practice 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.
10. Neither the PPTS nor the policies in the adopted and emerging development plans prohibit Gypsy and Traveller development in the Green Belt, but they all allow for occasions where, due to other considerations, it may be accepted. In this instance the parties broadly concurred on the areas of harm caused by the development, although there was some disagreement over the scale of that harm. The case therefore rested on whether other considerations existed that clearly outweighed the harm and so amounted to very special circumstances. To my mind that involved a judgement both in relation to the level of harm itself and the weight to be attached to the other considerations. In making that judgement, and having regard to the merits of the case, it was not unreasonable for Mr Lee to come to a different view to that of the Council. Consequently, it was also not unreasonable for him to pursue an appeal to allow that difference to be explored.
11. Turning to the other points raised by the Council, I share Mr Lee's view that in making the Order the Judge had a different task to me and so, whilst I had due regard to this judgement, I still had an independent assessment to make. The testing of Mr Jarman's evidence was reasonable given the necessity of exploring the need. The need figure given by Mr Lee ebbed and flowed during the appeal process, but if that was unreasonable I am not satisfied that it caused unnecessary expense. Finally, the closing submissions seemed to be doing nothing more than, quite reasonably, summarising the case from Mr Lee's perspective.

Conclusions

12. Accordingly, I conclude that unreasonable actions resulting in unnecessary expense have not been demonstrated, and so I refuse the application for costs.

J P Sargent

INSPECTOR