
Costs Decision

Inquiry opened on 8 October 2019

Site visits made on 5 December 2019

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 26th February 2020

Costs application in relation to Appeal Ref: APP/J0405/W/19/3219596 Land south of The Elms, Radclive Road, Gawcott, Buckinghamshire, MK18 4JB

- 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 J Botton for a partial award of costs against Aylesbury Vale District Council.
 - The inquiry 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 development described as 'the material change of use of land to use as a residential gypsy caravan site (13 pitches, each containing two caravans, including no more than one static caravan), together with laying of hardstanding and improvement of the existing access'.
 - The inquiry sat for five days: 8 October and 3-6 December 2019.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural matters

2. The main parties agreed that the appeal proposal should be described as *the material change of use of land to use as a residential gypsy caravan site (13 pitches, each containing two caravans, including no more than one static caravan), together with laying of hardstanding and alteration of the existing access*.

The submissions for Mr J Botton

3. The application was made in writing (Document A6), with final comments given at the inquiry. The gist of the submissions is as follows. After the LPA advised that it had not notified all interested parties of the appeal, the inquiry was adjourned on the first day. The Appellant had been ready to proceed, and the adjournment resulted in wasted costs associated with the first day of the inquiry, and the need to re-read and re-prepare for its resumption. An award is sought in respect of the costs due to the adjournment, including the fees of counsel, the costs of the planning witness, and the travelling costs of the Appellant and other witnesses.

The response by Aylesbury Vale District Council

4. The response to the costs application was made orally at the inquiry. The gist of the response is as follows. Given the circumstances, the principle of the

application for a partial award of costs is not resisted. However the award should be limited to the costs wasted in attendance on the first day of the inquiry. Re-reading should not be equated with preparation from the outset, and should not include the additional work requested by the Inspector.

Reasons

5. Paragraph 16-028 of 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.
6. There is no disagreement between the main parties about the principle that a partial award of costs should be made in this case. I share this view. The sole reason for adjournment of the inquiry on the opening day, before any evidence was heard, was the failure of the Local Planning Authority (LPA) to notify all interested parties of the appeal. That was unreasonable behaviour, which resulted in wasted expenditure by the Appellant.
7. Costs incurred by the Appellant in respect of attendance on the first day of the inquiry, namely the fees and costs of his counsel and professional witness, his own travelling costs and those of the lay witnesses were wasted. Whilst the preparation undertaken for an inquiry which is postponed is unlikely to be wholly abortive, I accept that it is necessary for those participating in the proceedings to re-familiarise themselves with the case before the resumption. The cost of re-preparation work by the Appellant's team was unnecessary expenditure. Re-preparation does not include undertaking the additional work which I had requested.

Conclusions

8. I conclude that the LPA behaved unreasonably in failing to notify all interested parties of the appeal in advance of the opening of the inquiry. This led to the adjournment of the inquiry on the opening day, and to unnecessary expenditure by the Appellant's team in attendance on that day and in re-preparing for the resumed inquiry. I conclude that a partial award of costs is justified in respect of the unnecessary expenditure which I have identified.

Costs Order

9. 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 Aylesbury Vale District Council shall pay to Mr J Botton the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the fees and costs of counsel and the professional planning witness in respect of attendance on the opening day of the inquiry, the travelling costs of the Appellant and the lay witnesses on the opening day of the inquiry, and the costs incurred in re-preparation for the resumption of the inquiry, excluding the additional work requested by the Inspector; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. Mr J Botton is now invited to submit to Aylesbury Vale District 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.

Richard Clegg

INSPECTOR