



Costs Decision

Hearing Held on 22 January 2020

Site visit made on 22 January 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Costs application in relation to Appeal Ref: APP/Y3940/W/19/3225487 Land to the rear of The Paddock, Heath Lane, Startley, Chippenham, Wiltshire SN15 5HH.

- 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 Mrs MacDonald for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of land to a private gypsy and traveller caravan site consisting of three pitches each of which would contain one no. mobile home, one no. utility dayroom and one no. touring caravan and associated works.
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Decision

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

The submissions for Mrs MacDonald

2. A full award of costs is sought on the basis, in summary, that the earlier application 17/02371/FUL was recommended for approval to the Committee and that the proposal the subject of the appeal was indicated to be acceptable to the Case Officer, but was refused under delegated powers. The case is made that taking into account all the background to the processing of the applications the Council has acted in bad faith and there has been inconsistency.
3. Furthermore, it is argued that the proposal is consistent with the development plan and that the appeal was unnecessary. Attention has been drawn to the advice in the Planning Practice Guidance which identifies the type of behaviour that may give rise to an award of costs against the local planning authority. In particular, this includes 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.
4. Also, it is said that the local planning authority has been inconsistent in their evidence of need as the Council confirmed in the report for the use of land for a residential caravan site¹ elsewhere in the area that the pitch need sited in Core Policy 47 of the Wiltshire Core Strategy (2015) (the Core Strategy) was out of date, yet sought to argue that it had met the need in relation to that policy at the appeal and this should be afforded weight.

¹ Application 18/11739/FUL – The Paddock, Hook, Nr Wootton Bassett, Wiltshire SN4 8EA.

The response by Wiltshire Council

5. The Council set out in its appeal submissions its understanding of the processing of the applications which it believes was not unreasonable. The earlier application (17/02371/FUL) was recommended for approval by officers, but the Committee judged that the scheme was harmful and did not meet with the relevant development plan criteria. It was consequently refused. A revised application, the subject of this appeal, sought to change the point of access but was essentially the same in all other respects and therefore considered not to overcome the substantive reasons for refusal. As a consequence, the refusal of the appeal proposal was consistent with the earlier decision of the Council.
6. The Council consider that the matters are a straightforward case as to whether the proposal conforms with the development plan and it took a view on the evidence before it and made the decision accordingly. Consequently, there has been no unreasonable behaviour in how the Council determined the proposal and it has substantiated its case at the appeal.

Reasons

7. 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.
8. In terms of the earlier application, which is not in itself a matter for my considerations in this cost decision, it was open for the Committee to come to a different view to the officer report. The reason for refusal highlights the access, issues with regard to essential services, and the harm to the character and appearance of the area. The reason for refusal made specific reference to the criteria of Core Policy 47 of the Core Strategy.
9. The appellant appears to have an understanding of the background situation regarding the processing of the applications. However, these are internal matters for the Council and the Planning Practice Guidance indicates that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage².
10. The appeal proposal was amended by a different vehicular access and information on essential services was supplied, however, this did not fundamentally change the scheme in terms of the impact on the character and appearance of the area. In this respect, the approach of the Council was consistent in the reason for refusal with both decisions.
11. At the appeal stage, the Council made satisfactory arguments led by professional witnesses that supported the reason for refusal. While I have found that the considerations fall in favour of the proposal, this is a matter of judgement, and the Council's case was not without planning merit. Consequently, I consider that it has not acted unreasonably in this regard.
12. In respect of the need and supply figures for gypsy and traveller sites that the Council put forward, it could be said that there was some inconsistency between Council documents in the weight to be attached to the figures and whether they were up-to-date. Nevertheless, I note that the proposal was not

² The Planning Practice Guidance goes on to advise although the behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.

refused with reference to this matter. While it was appropriate to examine the need and supply of sites at the hearing, this was not as a direct result of the reason for refusal, which focused on identified criteria of Core Policy 47. As the reason for refusal relates to a judgement as to the harm to the character and appearance of the development in this location, and did not rely on the need and supply figures, the appeal could not be avoided.

13. Taking all these matters into account, the Council refused the proposal for planning reasons and substantiated their case at appeal with evidence and satisfactory arguments. Examination of the need and supply figures was a background component of the evidence used to support the case made by both main parties. I have found that the appeal could not be avoided, and in all the circumstances I do not consider that the appellant was put to unnecessary or wasted expense by examining the other issues and testing the evidence, including the need and supply of gypsy and traveller sites.
14. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case and the appeal could not have been avoided. Accordingly, the appellant was not put to unnecessary or wasted expense.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR