The Planning Inspectorate

# Costs Decision

Hearing Held on 10 March 2020
Site visit made on 10 March 2020

**by G J Fort BA PGDip LLM MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 April 2020**

**Costs application in relation to Appeal Ref: APP/R0660/W/19/3240007**
**Land adjoining Meadow View Park, Dragons Lane, Moston CW11 3QB**

- 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 Ms D S Smith for a full award of costs against Cheshire East Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the change of use of land from agricultural land for stationing of caravans for residential purposes by 1 Gypsy-Traveller family with facilitating development (utility building, hard standing, septic tank, fencing and gates, shed/dog kennel).

## Decision

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

## Procedural Matters

2. I have used an abbreviated form of the description of development that appears on the application form, to be consistent with the related appeal decision, and for the reasons set out within that decision.

3. The costs application, and the Council's response were made largely in writing, with only the applicant's final response made verbally at the hearing. The principal points of that verbal presentation are reflected in my reasoning below.

## Reasons

4. The Planning Practice Guidance (PPG) 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. I am conscious in this context that the word "unreasonable" is used in its ordinary meaning[1].

5. The applicant brings their claim on substantive grounds, in particular that the Council did not review its case promptly following the lodging of the appeal, as part of sensible on-going case management; and that this prevented or delayed development that should clearly be permitted.

6. The planning application that led to the appeal was refused for one reason, relating to its location adjacent to high pressure gas pipelines and the

[1] Per *Manchester City Council v SSE & Mercury Communications* [1988] JPL 774

"potential risks to people in the vicinity of the hazardous installation". This reason for refusal was based on a holding objection from National Grid. Following the Council's decision, National Grid withdrew its objection[2]. However, I am mindful that the Health and Safety Executive (HSE), which tendered no objections at the planning application stage, had in the interim been consulted on other residential proposals in the adjacent area. The HSE gives advice on the cumulative impacts of the residential proposals in the "inner consultation zone" for the pipeline[3]. However, the correspondence makes clear that the HSE would advise against "more than two dwellings located in the inner zone". In December 2020 an appeal decision[4] was issued which allowed a single residential pitch on an adjacent site located within the HSE's inner consultation zone.

7. Following the December appeal decision, the Council resolved that it would not defend the reason for refusal in the current appeal, and this was confirmed in a letter to the Planning Inspectorate on 14 January 2020, requesting the appeal to be determined via the written representations procedure. On 9 January 2020, the applicant submitted a planning application[5] substantially similar to the one before me in the appeal with a target date for a decision of 5 March 2020- which is as yet undetermined.

8. Whilst I made the decision to proceed with a hearing in this case, I did so for two reasons: firstly, to understand the HSE's up-to-date position particularly following the December appeal decision and due to the number of other live applications adjacent to the appeal site and within the inner consultation zone – as planning permissions for any of these prior to my decision could have a material effect on the balance of considerations. Secondly, I considered a hearing to be an effective procedure due to the level of public interest in the case.

9. Nevertheless, the hearing could have clearly been avoided if the Council had determined the re-submitted application in a timely fashion on the basis that its objections to the proposal had been withdrawn. Moreover, the appeal could have been avoided in its entirety if the implications of the withdrawal of National Grid's objection- which was the basis of the sole reason for refusal- had been taken into account in a timely fashion, as the appeal was not lodged until 26 October 2019. This is particularly so as the substantive position of HSE-that it would not advise against developments of one or two dwelling units within the inner consultation zone-has remained unchanged since its letter of 16 September 2019[6]. To my mind, the Council failed therefore to review its case promptly as part of sensible ongoing case management, which the PPG indicates is an example of unreasonable behaviour. Moreover, this behaviour clearly resulted in wasted expense in the appeal process.

10. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is therefore justified.

[2] In a letter dated 17 September 2019
[3] In a letter dated 23 December 2019
[4] APP/R0660/W/19/323/2925 Dated 19 December 2019
[5] Council reference 20/0097c
[6] Written in relation to a planning application related to an adjacent site Council reference: 16/2247C

## Costs Order

11. 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 Cheshire East Council shall pay to Ms D S Smith, 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.

12. The applicant is now invited to submit to Cheshire East 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.

*G J Fort*

INSPECTOR