
Costs Decision

Hearing opened on 27 February 2020

Site visits made on 27 February 2020

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 09 April 2020

Costs application in relation to Appeal Ref: APP/P1615/W/19/3227891 Land south of Straight Lane, Corse

- 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 Mr J & Mrs D Whayman for a full award of costs against the Forest of Dean District 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 containing one mobile home, one touring caravan and car parking, and one children's play area.
 - The hearing was conducted over two days: 27 & 28 February 2020.
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Decision

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

Procedural matter

2. At the hearing, the main parties agreed with the suggestion in my pre-hearing note that the site should be referred to as land south of Straight Lane, Corse, and I have identified it accordingly in the appeal details above.

The submissions for Mr J & Mrs D Whayman

3. The application was made in writing (Document A8), with final comments given at the hearing. The gist of the submissions is as follows. In the first instance the full costs of the appeal are sought; in the alternative several partial awards are sought in relation to individual reasons for refusal.
4. Paragraph 16-049 of Planning Practice Guidance (PPG) gives preventing development which should clearly be permitted as an example of behaviour which may give rise to a substantive award against a local planning authority. The proposal is consistent with the Development Plan, the National Planning Policy Framework (NPPF) and Planning policy for traveller sites (PPTS), and the full costs of the appeal are sought.
5. The first reason for refusal could have been dealt with by an occupancy condition, as suggested by the Appellants. The Local Planning Authority (LPA) was invited to reconsider its position, but it did not take this step. Insofar as the second reason for refusal is concerned, the LPA did not allege a breach of Policy CSP.6 the subject of which is gypsy sites, nor of PPTS. It is accepted in the statement of common ground that the site is near to the settlement (Document O2), and the reasoning in relation to the NPPF is strained and

inconsistent with the PPTS. No substantive evidence is produced in relation to reason for refusal No 3, which is concerned with the effect on the character and appearance of the area, and there was no objection from the Conservation Officer.

6. It was always the case that the provision of utility services could be subject to a condition, and the fourth reason for refusal should not have been imposed. It is accepted in the statement of common ground that this matter could be dealt with by means of a condition, and this position could have been taken in the LPA's statement. A preliminary ecological assessment was submitted with the appeal, but the LPA failed to withdraw its objection concerning wildlife. Queries concerning the appraisal could have been resolved by engaging with the Appellants, and, if this had occurred, there would have been no need for the LPA to produce a statement on this matter. A statement was produced by the Appellants' ecology consultants in an effort to reduce time on this matter at the hearing, but the LPA did not respond to the Appellants' statement until shortly before the hearing. Moreover the previous application for the development was not refused planning permission due to the lack of a preliminary ecological appraisal.

The response by the Forest of Dean District Council

7. The proposal does not comply with the Development Plan, in particular with Policy CSP.1 of the Forest of Dean Core Strategy and Policies AP 1 & AP 4 of the Forest of Dean Allocations Plan. The LPA has supported the reasons for refusal. The Appellants are entitled to reach a different view, but that does not justify a full award of costs.
8. Insofar as the first reason for refusal was concerned, at the time of the application the LPA was not satisfied as to the status of the intended occupants. The onus was on the Appellants to demonstrate that the intended occupants had gypsy status. Reason for refusal No 2 did not mention Policy CSP.6, but the status of the intended occupants was unclear. Consideration of distances to services is subjective.
9. With reference to reason for refusal No 3, the LPA considered the effect on the character of the area, and this was covered in the planning statement and at the hearing. Reason No 4 was reasonable at the time, but, in the light of further information, the LPA has confidence that the provision of basic services can be dealt with by a condition. Reason No 5 referred to the lack of a preliminary ecological appraisal, the LPA having considered the application before it. The statement from the Appellants' ecologists was only accepted by The Planning Inspectorate on 20 February 2020, and the LPA had done well to consider it in the time available.

Reasons

10. Paragraph 16-028 of 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.
11. Reasons for refusal Nos 2 and 3 are concerned with locational sustainability and the effect on the character and appearance of the area. Although the statement of common ground acknowledges that the site is near to the settlement, the LPA explained in its statement and at the hearing its concerns

about the nature of the route between the appeal site and Staunton & Corse, with no footway or lighting for virtually all of the distance along Straight Lane. The site is within a locally valued landscape, and the LPA referred to a reduction in openness which would result from the proposal, made clear its concerns about the position of the pitches which would be set back from the road, and about the nature of the landscaping scheme, and it explained the relationship of the landscape designation to the former Chartist settlement and the conservation area. In consequence the LPA reached the view that the proposal would be in conflict with several policies in the Development Plan and aspects of national policy. I am satisfied that evidence was produced to substantiate the LPA's position. Whilst I have found that the appeal proposal would accord with the Development Plan considered as a whole, that does not mean that, having regard to the evidence before me, this is a proposal which should clearly have been permitted, and in this respect the LPA did not behave unreasonably, having regard to paragraph 16-049 of PPG. Insofar as reasons for refusal Nos 2 & 3 are concerned individually, I have reached the view that the LPA produced evidence to substantiate its position, and that it did not, therefore, behave unreasonably in respect of these objections.

12. The first reason for refusal objects to the proposal due to the lack of information to enable the LPA to reach a view on gypsy status. It is not the case that details about the work and travel of intended occupants are required in respect of any proposal for a traveller site. If planning permission is granted, an occupancy condition can be imposed to ensure that the site is occupied by persons for whom the accommodation is intended. The absence of information relating to gypsy status would reduce the weight which could be given to personal need, but it is not of itself a reason to refuse planning permission. The LPA should have determined the planning application for a gypsy and traveller site on the basis on which it was submitted. I find that the LPA behaved unreasonably in respect of the first reason for refusal. In his statement (paras 17-21), the Appellants' planning consultant addressed this reason: the cost of that element of work was unnecessary. At appeal stage, the Appellants also submitted details about the intended occupants and their habit of life (paras 23-34 of the hearing statement). That was additional information submitted as part of an argument relating to personal need for the proposed development, which I took into account in my consideration of the appeal. As such I draw a distinction between the preparation of that part of the Appellants' evidence and the direct response to reason for refusal No 1, and the former work did not involve wasted expenditure.
13. The third criterion of Policy CSP.6 requires that gypsy and traveller sites should be able to provide services such as a water supply and sewage disposal arrangements. In his email of 24 September 2018¹, the Appellants' planning consultant stated that water supply and sewage arrangements could be provided, but argued that this matter could be addressed by a pre-commencement condition. It cannot be assumed that satisfactory arrangements for utility services will be able to be made at any site, and, in the absence of any specific evidence about service provision, the LPA was entitled to refer to this matter in a reason for refusal. That information was provided at appeal stage, with the result that reason for refusal No 4 was not then pursued by the LPA, but it had not been unreasonable for planning permission to be refused for this reason.

¹ Document A2, appendix 7.

14. I turn now to the fifth reason for refusal relating to the lack of a preliminary ecological appraisal. The LPA had made clear during its consideration of the planning application that a preliminary ecological appraisal was required. That is stated in the consultation response of the Sustainability Team Leader, and he referred to the species which should be addressed given the appeal site's location. This approach is consistent with Part 3.2 of Policy CSP.2 in the Forest of Dean Core Strategy which says that developments should support existing features, and provide additional features for a wide variety of species and habitats. In the absence of the appraisal, a pre-commencement condition would not have been appropriate, since the implications of addressing ecological matters for the development proposed would have been unknown. The LPA did not behave unreasonably in refusing planning permission due to the absence of a preliminary ecological appraisal. Subsequently following the submission of an appraisal at appeal stage, the LPA raised concerns in its own statement. That was an appropriate way to respond, and allowed sufficient time for these matters to be addressed in a statement from the Appellants' ecological consultant. Nor, following preparation of this statement, did the LPA behave unreasonably in the time taken to reach common ground on this matter: the Appellants' statement was submitted on 17 February 2020, accepted by The Planning Inspectorate on 20 February, and the statement of common ground, which refers to agreement on this matter was signed on 26 February.

Conclusions

15. I conclude that the LPA did not behave unreasonably in refusing planning permission in respect of reasons for refusal 2-5. It follows that neither a full award of costs, nor partial awards in respect any of these reasons are justified. However I do conclude that reason No 1, relating to gypsy and traveller status, was unreasonable, and this led to unnecessary expenditure by the Appellants' in the preparation of a section of their planning consultant's statement for the hearing. A partial award of costs is justified in respect of the unnecessary expenditure which I have identified.

Costs Order

16. 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 the Forest of Dean District Council shall pay to Mr J & Mrs D Whayman the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing the section of Dr Murdoch's statement addressing the first reason for refusal (which does not include the evidence prepared in relation to personal need and circumstances); such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. Mr J & Mrs D Whayman are now invited to submit to the Forest of Dean 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