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## 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**

**Decision date: 09 April 2020**

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### **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 the Forest of Dean District Council for a partial award of costs against Mr J & Mrs D Whayman.
  - 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 the Forest of Dean District Council**

3. The application was made in writing (Document L3), with final comments given at the hearing. The gist of the submissions is as follows. The application relates to work undertaken in connection with the reason for refusal concerning ecology. Paragraph 16-052 of Planning Practice Guidance (PPG) gives lack of co-operation in providing information, delay in providing information, and only providing information at appeal stage when it was requested at application stage as examples of behaviour which may lead to a procedural award of costs against an appellant.
4. In his consultation response on the planning application, the Local Planning Authority's (LPA's) Sustainability Team Leader explained that a preliminary ecological appraisal was required. The Appellants (through their landscape consultant) were aware of this requirement<sup>1</sup>, but no further information on ecology was provided prior to determination of the application. The fifth reason for refusal accordingly referred to the lack of a preliminary ecological appraisal. The absence of the appraisal could simply have been addressed in the LPA's appeal statement without any expert input. However a preliminary ecological

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<sup>1</sup> See Mr Crandon's email of 2 November 2018 to the LPA in Document L3 (Appendix 2).

appraisal was submitted with the appeal<sup>2</sup>, on which the expert advice of the Sustainability Team Leader had been sought. As the LPA was not satisfied with the information provided, an appeal statement was prepared by the Sustainability Team Leader<sup>3</sup>. Subsequently the Appellants submitted further information from their ecological consultants, which required consideration by the LPA's Sustainability Team Leader before agreement was reached that the fifth reason for refusal would not be pursued. The submission of new information, at appeal stage, resulted in unnecessary and wasted expense by the LPA. If the appraisal had been provided at application stage, an appeal statement would not have been needed on this matter.

### **The response on behalf of Mr J & Mrs D Whayman**

5. The response to the costs application was made orally at the hearing. The gist of the response is as follows. The reasons for refusal of the previous planning application for the proposed development did not refer to the need for a preliminary ecological appraisal, whereas they did refer to the absence of a landscape and visual impact assessment<sup>4</sup> which was then provided with the second application. If specified in the same way, a preliminary ecological appraisal would have been provided. In any event, the same consideration would have been required by the LPA if the appraisal had been received earlier.

### **Reasons**

6. 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.
7. The LPA 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 refers 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.
8. It is true that the Sustainability Team Leader expressed a similar view in respect of the Appellant's first application<sup>5</sup>, and that this did not lead to a reason for refusal. However the Appellants' team was aware of the consultation response in respect of the appeal proposal: the landscape consultant responded to the landscape comments made, and the opportunity could also have been taken to follow up the ecology comments at application stage. As paragraph 16-052 of PPG indicates, it was unreasonable for the Appellants not to provide the information sought whilst the planning application was being considered by the LPA.
9. Subsequently, the preliminary ecological appraisal was submitted at appeal stage. This was considered by the LPA, and, because its concerns were not fully addressed, a hearing statement was prepared by the Sustainability Team Leader. It was only following the later submission of a statement by the Appellants' ecological consultants, which provided clarification on certain

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<sup>2</sup> Document A2, Appendix 1.

<sup>3</sup> Document L2, Appendix 1.

<sup>4</sup> The reasons for refusal are set out in the report on the first application Document A9.

<sup>5</sup> Document A9, page 2.

matters, that it was agreed that the objection relating to ecology would not be pursued by the LPA.

10. Clearly, if the preliminary ecological appraisal had been submitted at application stage, the LPA would have had to devote time to its consideration, and, no doubt, to a supplementary document providing clarification. However, the preparation of an appeal statement in support of a reason for refusal is a more substantial task than composing an internal consultation response. This is demonstrated by the LPA's statement, which contains separate sections on the appraisal, great crested newts and bat roosts. The additional expenditure incurred on the preparation of an appeal statement addressing the ecological objection was unnecessary, being a consequence of the Appellants' failure to co-operate in producing the information sought at application stage.

### **Conclusion**

11. I conclude that the Appellants behaved unreasonably in failing to respond to the LPA's request for a preliminary ecological appraisal until the submission of the appeal. This led to the LPA incurring unnecessary expenditure in preparing an appeal statement specifically to support the ecological reason for refusal.

### **Costs Order**

12. 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 Mr J & Mrs D Whayman shall pay to the Forest of Dean District Council the costs of the appeal proceedings described in the heading of this decision, limited to those additional costs in excess of a consultation response incurred in preparing Mr Chapman's statement on behalf of the LPA; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The Forest of Dean District Council is now invited to submit to Mr J & Mrs D Whayman, 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