
Costs Decisions

Hearing Held on 13 January 2021

Site visit made on 14 January 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2021

Costs application A in relation to Appeal Ref: APP/K2420/W/20/3261112 Gnarley Farm, Ashby Road, Osbaston CV13 0HP

- 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 Gavin Ingham for a full award of costs against Hinckley & Bosworth Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the temporary siting of a prefabricated mobile home.
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Costs application B in relation to Appeal Ref: APP/K2420/W/20/3261114 Gnarley Farm, Ashby Road, Osbaston CV13 0HP

- 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 Gavin Ingham for a full award of costs against Hinckley & Bosworth Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of land for the siting of two caravans for residential use.
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Decision

Costs Application A

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

Costs Application B

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

The submissions for Mr Ingham

3. The applicant provided a written submission prior to the hearing which set out that an award of costs was sought with respect to the change of use appeal proposal for the siting of two caravans only, as without the benefit of a permission to retain them they would be homeless and there would be no essential labour available to the farm.
4. In summary, that written submission states that the applicant brought forward evidence to address issues that were unresolved both at and following the previous appeal at Gnarley Farm. They contend that the Council failed to consider this information afresh, including with respect to the information pertaining to the availability of the existing farmhouse, the possibility of extending it, with regard to the granting of a temporary planning permission and to the implications of their decisions in respect to their obligations under

the Human Rights Act (HRA). The applicant also considers that the Council considered the farmhouse to be unavailable in email correspondence, but then subsequently altered its position.

5. At the hearing, the applicant advised orally that they now wish to make applications for full awards of costs relating to both of the appeal applications. The oral submission is included in the annex to these decisions, but in summary these are on the grounds that the Council led the applicant to believe that permission to retain the two caravans would be forthcoming and that they approached the determination of both applications with a 'closed mind', failing to address the evidence that had been put before them. In the applicant's view, the Council was not able during the hearing to defend the position that they had taken in refusing both applications.
6. The applicant further considers that the Council acted unreasonably at the hearing, as it agreed with the form of the applicant's suggested planning condition which would define the parameters of how long an approved dwelling could be retained on the appeal site, despite having previously maintained a position that a temporary permission would not be acceptable.

The response by Hinckley and Bosworth Borough Council

7. The Council made its response orally at the hearing and this too is included in the annexe to these decisions. In its response, the Council considers that it considered all evidence presented and this can be seen and listed in both delegated reports. The Officer's report takes into full consideration all matters presented having regard to the existing appeal decision which is given significant weight and that is not unreasonable having regard to the most recent judgements.
8. They further consider that the report does not fail to address and have regard to the implications on the HRA which has been considered during the course of the application. The discussion of conditions as part of the hearing should also not prejudice the Council's position and this discussion was part of the appeal procedure without prejudice to the Council's case. The email to which the applicant refers does not express a view on the likely outcome of the matter in respect of the unauthorised caravans.

Reasons

9. 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.
10. The Council's delegated reports and its oral submission at the hearing rely heavily on the previous appeal decision, which is of course material to the determination of the current appeals. However, it is common ground between the two parties that there is additional information before me compared to what was presented with respect to the previous appeal. The Council's reliance on the previous appeal and on the premise that the circumstances have not changed since that time means that it has failed to explain how it considered the information that had been provided by the applicant in order to attempt to overcome the previous refusal.

11. More specifically, there is no detailed consideration of the applicant's submissions in either the delegated Officer reports or in the submission made with the appeals. There is no reference to the Keen or Ford cases in the Council's delegated reports, nor is any reference made to the appeal decision which was submitted with the planning applications. The Council subsequently referred to the Ford case in its appeal statements, but there is no detailed critique of how it supports their case.
12. Further, the Council maintains that the farmhouse is available, despite the fact that the applicant has submitted that they have no legal right to live there and that their mother is unwilling to move from it or share it. There is no consideration offered by the Council in response to why the farmhouse cannot be extended, including the legal and financial implications that the applicant outlines. The Council does not address the applicant's current argument as to why a temporary permission would be appropriate or how the proposed prefabricated building can be removed from the appeal site, which they offer to counter the previous Inspector's conclusions on that matter.
13. The Council's assessment of the HRA implications of the proposed development is covered in a single paragraph in each Officer report, which sets out only its duty under The Human Rights Act as opposed to any assessment of the circumstances of the cases. Whilst the Council maintained its position at the hearing that this represents a consideration of human rights, there is nothing in the Officer reports to suggest how it was considered, how their duty as the decision maker was discharged, what conclusions were reached and what weight was given to it in the planning balance.
14. Taken together, the Council's failure to address the arguments advanced by the applicant and instead rely heavily on the previous appeal decision represents unreasonable behaviour. If the Council had fully addressed this evidence, they may have reached different conclusions on both applications, thus avoiding the need for the appeals and the expense that the applicant has occurred in making them.
15. On the other matters raised, the Council's assessment of the economic, social and environmental benefits does, as the applicant states, fail to weigh in the benefits that would arise from the essential need for a rural worker being met at Gnarley Farm and the associated benefits to the farm enterprise. However, I do not find this in itself to be unreasonable behaviour, as the Council's overall position was that the farmhouse was available to meet the essential needs of the business.
16. The wording of the Officer email to which the applicant refers is open to interpretation, however in any event it does not bind the Council to taking any subsequent course of action. It is in essence a matter between the parties which does not relate to a detailed assessment of the planning merits of either case and it does not represent unreasonable behaviour in the context of these two appeals.
17. Neither is the Council's willingness to enter into positive discussions at the hearing with respect to a temporary permission condition unreasonable. On the contrary, it is an important part of the hearing process and discussions must take place without prejudice to the Council's position, especially as to do so in this instance did not affect the Council's overall position that the farmhouse is available.

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified in respect of both appeals.

Costs Order

19. 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 Hinckley and Bosworth Borough Council shall pay to Mr G Ingham, the costs of the appeal proceedings described in both headings of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Hinckley and Bosworth Borough 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.

Graham Wraight

INSPECTOR

Annexe: Submissions made orally at the hearing

Applicant's additional submissions

21. The written application relates primarily to the caravan proposals because there is no doubt that when the Council refused the application for the prefabricated dwelling they led the applicant to believe that the Council considered the caravans were acceptable and provided adequate accommodation and we have referred you specifically to that email of 29th April from the case officer that makes that abundantly clear.
22. Not only was it said in the email but it was also said in the Committee Report. This is the delegated report on the prefabricated dwelling. If you look at paragraph 8.16 it states the applicant has been residing with his family in two mobile homes on the site since 2013, the mobile homes are unauthorised and therefore their occupation is currently unlawful. However, there has been no attempt to regularise the units and despite this none of the submitted reports has expanded on the essential need case as to why the applicant can no longer remain residing on site in the mobile homes.
23. That was always the tenet of the Council's position in refusing the application for the prefabricated dwelling. The appellant lives in the two mobile homes that has been going on 6/7 years, that's been suitable and that can continue to be the case. Whilst I have focussed on the proposal for the mobile homes, the submissions I have made are just as relevant to the prefabricated dwelling. Because my submission is this, that having succeeded at the previous appeal in getting the then proposal dismissed, the Council have simply adopted a closed mind to all other proposals that have been put before them.
24. As far as they are concerned, that appeal was dismissed, you have heard today from the Council repeatedly and it is stated by the Case Officer in the delegated report there has been no change in circumstances. And therefore, the outcome

should be exactly the same. Well, it is blatantly obvious that that is not the case. For a start, that Inspector was dealing with a permanent dwelling, that was how it was treated, we are not dealing with a permanent dwelling, we are dealing here, and the Council was considering, temporary dwellings. And it is not good enough for the Council to say well the Inspector rejected temporary permissions.

25. What was put to the Inspector at that time, part way during the hearing, was well we would accept a temporary permission. And the discussion seems thereafter to be around a time limiting condition and does that fit with the government guidance on temporary permissions for mobile homes in the countryside. Well that's not the relevance of what was submitted to you and to the Council subsequently. No one ever suggested that the time period should be 3 years to establish a new business because that is irrelevant. No one is suggesting a 3 year permission followed by a 3 year permission followed by another 3 year permission because that is irrelevant.
26. What we put to the Council was a condition that is temporary in the sense that it is contingent on some future event and those conditions are perfectly lawful. You only have to look at the advice in the National Planning Policy Guidance on temporary permissions to see that approach is acceptable and lawful. I think it is referred to as in the meantime permission when some contingent event arises in the future that causes the permission to cease, but it is perfectly acceptable. You don't just have 2 years, or 3 years or 5 years, temporary permissions aren't defined solely that way.
27. So, there is a fundamental difference. But secondly and just as importantly, any reading of that Inspectors decision will show you that the Inspector was not satisfied on the evidence available to her that there were not other forms of accommodation that might better suit the needs of the appellant and indeed which might be acceptable to the Council. She says that. And she says this, on the other hand, is a permanent dwelling and permanent dwellings should be matters of last resort.
28. Well, the subsequent proposals put to the Council were not permanent dwellings and this time all the evidence which was lacking from the submission which went to appeal previously was made available to the Council. And the Council adopted the same closed approach to these applications, just as much on the portable building as they did on the caravan proposal, in fact more so.
29. Because from the outset they chose to label it a log cabin and treated it just the same as the previous proposal. The fact that evidence was presented that it came in two parts and is bolted together. It can satisfy the caravan sites that it's a mobile home. This was disregarded. They treated it exactly the same way. They said that no circumstances had changed. Everything has changed. Everything changed. The proposal changed. The evidence was there as to why the house could not be extended.
30. The evidence was there why existing buildings could not be converted. Logical explanations were provided which were not provided to the previous Inspector. Which then informed the Council's decision but were nonetheless disregarded by them. Case law which the Inspector had not taken into account in her decision was presented to the Council. The relevant test set out in Keen was presented. Now the Council says that all that was taken into account by the Committee, by the Officers in reaching their decision. Well, my point to you is

- you read both of those delegated reports, and you find a reference to Keen or Ford or the appeal decision we put with the application. You won't find those references because they weren't considered and they weren't addressed.
31. We dealt with the Human Rights Act and the implications of the HRA. The Council says well we did that, look at that paragraph here were we quote the HRA. Where in the report itself, having quoted the HRA as a relevant consideration, did the Officers deal with the circumstances of this case and the ramifications of the HRA in the circumstances of this case? So that you can be satisfied that they have actually done what they've said and addressed it. There isn't anything. There is nothing at all about those submissions. There is nothing at all which goes into details as to why it would be impractical to convert buildings and so on. The only thing is they've accepted the functional test, but they keep saying that the existing property is available.
 32. They keep on drawing this distinction between the personal wishes of the applicant and the needs of the enterprise. Now I've already addressed you at length on that. They are one and the same. And the personal needs or preferences of the applicant have no relevance or bearing on whether or not they occupy this dwelling. Where in the report have the Council in their report, either report, addressed all the factual evidence that was submitted with the applications in order to make a reasonable determination as to whether the dwelling was available and appropriate to the needs of the appellant.
 33. Again, you won't find anything. And worse still, at the appeal this morning the Council could not offer a single reason as to why the existing farmhouse could be considered available or suitable to the needs of the appellant. Not one reason was advanced. That as I say is the clearest possible evidence that the approach was we won the appeal, nothing has changed we're going to issue the same decision as we did before and we are going to refuse. No consideration of any of the evidence.
 34. No regard to the fact that the proposals were fundamentally different and temporary. The Council said, we can't issue a temporary consent because the Inspector agreed with us. And yet here we are today, the Council accepts that our condition we propose is reasonable, appropriate and satisfies the tests for imposing conditions. The very basis that we put this temporary form of consent to the Council in the first place. It wasn't acceptable then, but now, today this morning when my client has been forced to spend thousands of pounds on an appeal its acceptable, and its reasonable, and it satisfied the tests.
 35. No suggestion that it is contrary to government guidance. As I say, a closed book. No consideration to the fact, no consideration to the evidence, no attempt to exercise their discretion impartially or fairly on either of these applications.
 36. Can I just finally turn your attention to the reports and they are pretty much the same when they look at the principles of sustainability in the National Planning Policy Framework. Economic, social, environmental. I'm just going to give you one example of the mobile home which can be found at 10.5 of the report because I think it is a classic example of the Councils unwillingness to even begin to exercise their discretion properly in relation to these appeals.
 37. Economic considerations. Read this, the scheme is only for one dwelling which would provide limited benefits to the local economy through the creation of

- jobs and demand for services and materials for the construction of the development itself and for the future occupation of the development supporting businesses in the wider rural area given the lack of businesses and services in the immediate area.
38. That is how they summarised the economic implications of this proposal. What about the farm business? What about the fact that they have accepted there is a functional need for somebody to live on the farm and run the farm? What about the fact that this supports the living of 3 people. Mr Ingham, his wife and his son and indeed to a large extent Mrs Ingham senior because she derives income from the profits of the business. What about supporting agriculture? Fundamental economic considerations in the determination of this proposal, not even mentioned in 10.5. Its all about jobs from constructing the mobile home, that's not the issue.
39. Social. This is how the Council described the social benefits of the scheme. Limited social benefits to the local community as it is for a private dwelling for the existing residents of the farm which benefits from an existing farmhouse serving its needs. Where is the reference to the HRA? Where is the reference to the social implications of providing accommodation for the needs of four adult human beings.
40. Where are the issues relating to safeguarding Mrs Ingham senior's home or privacy? What about the implications of throwing them out of their home which is of course the inevitable implication of the subsequent decision to refuse the caravans. And the Council possibly having to provide a three or four bed home to homeless people that they could have used elsewhere for another family. What about the ramifications for the business? Again, none of that is addressed.
41. Environmental. Limited harm to the countryside. What about the fact that its essential to have agriculture supported by essential labour? You don't want people having to travel unnecessarily to work when they should be living on their own farm. I make these points because it all goes to support the view by any rational consideration of these matters that this Council has never even attempted to give fair, objective and impartial consideration to either of these proposals. Not at any stage have they done so and that is manifestly clear from the delegated reports.
42. And in those circumstances, I do contend that they behaved unreasonably and a full award of costs should be awarded to the appellant. And can I say that these proceedings this morning have convinced me, not only have the Council presented an inadequate case to support their reasons for refusal they have to all extents and purposes provided no case at all to support their reasons for refusal. As I say the fundamental plank of the Council's case is there is an available dwelling, but not one reason, not one could be given as to why the dwelling is available to the appellant not one. And I reiterate that not one reason was given in the delegated reports either.
43. A full award of costs is sought in respect of both appeals because my contention is the unreasonableness of the Council in not considering the nature of the proposed changes and all the evidence that was presented and of course that applies exactly the same to both proposals. The reason that I originally focused on the caravan proposal is because in that the Council justified refusing the first application on the basis of the existence and availability of the

caravans, as is abundantly clear. They invited a retrospective application and I know the outcome of the retrospective application cannot be a foregone conclusion, but they invited an application only to refuse that again on a closed basis so it seemed that was a more glaring example of unreasonable conduct.

44. But in light of the matters I've just outlined, we believe the Council have acted unreasonably and the appellant has incurred unnecessary costs as of result of both, as regard to both proposals in terms of the way that these applications have been dealt with.

Council's response

45. The Council has considered all evidence presented and this can be seen and listed in both delegated reports. The Officers report takes into full consideration all matters presented having regard to the existing appeal decision which is given significant weight and that's not unreasonable having regard to the most recent judgements.
46. The Officers report takes into account all matters presented having regard to the applicant's submission however it is a planning judgement nonetheless having regard to development plan policies and the context of the submission in considering any application.
47. The report does not fail to address and have regard to the implications on the HRA which has been considered during the course of the application, however the rights have to be balanced against all material considerations which is again a planning judgement and whilst the rights are important it should not be assumed they should outweigh the importance of control under the Town and Country Planning Act.
48. The discussion of conditions as part of today's appeal should also not prejudice the Council's position and that discussion was part of the appeal procedure without prejudice to the Council's case.
49. In reference to the email between the case officer and appellant's agent, this correspondence is between two planning professionals who would be aware that any comments in exploring all the options present as expressed by the previous Inspector in the previous appeal, the email does not express a view on the likely outcome of the matter in terms of the unauthorised caravans would be granted but it is an option to be explored having regard to the amount of time they have been unauthorised.
50. The Council does not therefore consider it has acted unreasonably in making a judgement and has considered all the relevant submissions in doing so and had regard and reference to the HRA and relevant case law in the determination and judgement of the application.

Applicant's final comments

51. The Council say they have acted reasonably, they have taken everything into account and given due consideration to everything, its all well and good saying that but you need to look at what is in front of you in terms of the evidence, including the two delegated reports and in what the Council states, is in no way supported by the evidence that is in front of you. It just isn't there, not only have these matters not been adequately considered, in many respects they have not been considered at all.

52. As regard to the conditions which the Council mentioned. I accept these have been discussed on a without prejudice basis. The point is, the Council seem to accept, or at least do not dispute that the condition I suggested is lawful, and reasonable and deals with the circumstances of this case. Otherwise they would have objected to it and therefore whether it is without prejudice or not, it was a condition that was available to the council to impose had they wished to do so and it was the basis on which you will recall my report that accompanied the planning applications suggested we moved forward with. So that option was already before the Council.