

Costs Decisions

Inquiry Held on 5,6 & 7 January 2021

Site visit made on 7 January 2021

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 February 2021

Land adjacent to St Theresa, Pudsey Hall Lane, Canewdon

Costs applications in relation to Appeal Refs: APP/B1550/C/18/3209438 (Appeal A), APP/B1550/C/18/3209439 (Appeal B) and APP/B1550/W/18/3209437 (Appeal C)

- The applications for Appeals A and B are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application for Appeal C is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mr Jeremiah O'Connor for a full award of costs against Rochford District Council.
 - The Inquiry was in connection with appeals against enforcement notices alleging the unauthorised formation of a hardstanding to facilitate the use of the site as a gypsy/traveller site (Appeal A) and a material change of use to a residential gypsy site (Appeal B) and an appeal against the refusal of planning permission for a gypsy/traveller pitch comprising two mobile homes and separate day room building together with the siting of two touring caravans and hardsurfacing (Appeal C).
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Decisions

Appeals A, B and C

1. The applications are refused.

The submissions for Mr Jeremiah O'Connor

2. In the written costs' application, the appellant argues that amended plans and additional information to support the planning application were submitted to the Council following a site visit by the Case Officer.
3. The Council acknowledges that it cannot demonstrate a 5-year supply of pitches and with previous appeals in the district succeeding for this reason, the Council was well aware of the consequences of refusing planning permission.
4. The applicant considers that he has been put to unreasonable and unnecessary costs of fighting the appeals, including two enforcement notices when one combined notice could have been served.
5. Due to a stop notice the applicant states that he has been unable to lay shingle at the site and the dust is causing respiratory problems.
6. The application was added to at the Inquiry. In summary, the applicant's case is that the elected Members acted unreasonably in the following respects:

- (1) Wrongly ignored or failed to explain why they did not follow a recent relevant appeal.
 - (2) Delayed a development that should have been granted at least a temporary consent.
 - (3) Failed to properly consider all relevant material considerations.
 - (4) Misdirected themselves as to the correct breach and correct tests to be applied.
 - (5) Failed to properly take into the balance all relevant material considerations.
 - (6) Wrongly ignored the recommendation of their planning officers.
 - (7) Failed to apply the human rights balance.
 - (8) Failed to give adequate reasons
7. In addition, there are errors in the enforcement notice which will need to be addressed. Time was taken up with the question of two planning units. Counsel for the Council persisted with the argument that there was more than one planning unit contrary to the Planning Officer's evidence who always accepted there was only one. Another Council Officer gave a contrary view but that Officer did not give planning evidence.
8. If the notices are quashed, costs must follow. If the notices are amended then again costs must follow those amendments and the wasted time in dealing with them. The applicant had no control of the drafting of the notices and the fault would be entirely down to the Council.

The response by Rochford District Council

9. The Council responded in writing to the initial submission (as summarised below) and orally to the additional points raised.
10. The development had commenced prior to submission of the necessary planning application. That application was invalidly made on 4 April 2018. It was correct to clarify the description of development and the extent of the site edged red ahead of formal validation.
11. Previously refused planning applications concerning gypsy and traveller sites in the district have been allowed through the appeal process with the grant of temporary permission. However, subsequent applications must be decided on individual merit. Where temporary permission was granted on appeal on land adjacent 'Woodville'¹ it was to allow a review of the Council's allocated site to come forward. Despite the passage of time, that site is not in residential use bringing into question the demand for sites. The associated costs application was refused.
12. The need for a site is a significant material consideration, but development of land designated as Green Belt is an exception. Harm to the openness of the Green Belt also carries significant weight which led to Members reaching a different conclusion.

¹ Appeal ref: APP/B1550/W/3174424 dated 28 February 2018

13. The move onto the site was premeditated with little or no regard to the planning process. Works began and occupation commenced without allowing the Council opportunity to fully consider the planning application. The appellant was well aware of the breach of planning control. It is Government policy that intentional unauthorised development is a material consideration to be weighed in the determination of applications and appeals.
14. The Council positively engaged with the appellant and the service of the notices was not a surprise. There was no obligation to do so but serving separate notices for the engineering operations and material change of use provided a clearer structure. The engineering operations were subsequently subject to a stop notice issued under section 183 of the 1990 Act. To lay a shingle top dressing would have been a direct breach of the stop notice. No evidence was submitted of health implications caused by dust. During an on-site meeting the additional layer of hardstanding was requested for aesthetic purposes.
15. In response to the eight additional points, the Council submitted, in summary:-
 - (1) Neither party's case was consistent with the previous Appeal Decision which turned on the weight to different material considerations. Planning judgement attributing different weight does not amount to unreasonableness.
 - (2) No prejudice can have been caused when the appellant is occupying the appeal site and the enforcement notices are suspended pending the outcome of the appeals.
 - (3) A fair and comprehensive committee report was before Members. The Council Officer who attended the committee meeting has described how Members attributed different weight to the various considerations. Members may not agree with Officers and it is difficult to see how that amounts to unreasonableness.
 - (4) This is not a point involving Members.
 - (5) There is no difference between this and point 3.
 - (6) It is not true that Members ignored Officers. They disagreed with Officers and that is not the same. They voted upon the application to resolve to refuse the application. That is the nature of local democratic decision making.
 - (7) There was no failure of the human rights balance. Members had the information in the committee report. They were aware of the implications and struck a different balance from Officers and gave it less weight.
 - (8) The reasons for refusal are clear. 'Inappropriate development' has clear meaning in the Green Belt context.
16. In terms of the merits of the decision to refuse planning permission, there is nothing unreasonable in Members taking a different view from Officers or an Inspector in different cases.
17. The submissions regarding the planning unit are plainly not true. Mrs Dunn was the Council's most senior Officer who gave evidence. Officers have been candid and they disagree. The planning unit turns on questions of judgement. Different people will arrive at different views; that is the nature of planning. There was

nothing unreasonable in Mrs Dunn's exercise of judgement. It was eminently reasonable to regard the land at the rear as agricultural. The applicant's argument had come late at the Inquiry and Mrs Dunn had produced a supplemental proof of evidence in response. This ground is not a credible position for the applicant to take.

18. The Council accepts that the enforcement notice (Appeal B) can be improved and tidied up. There are legitimate differences of opinion in matters of planning judgement going to ground (b). It is quite wrong to say that costs must be awarded if the enforcement notice is quashed. There would have to be an award of costs every time a notice is quashed which plainly does not occur.

Reasons

19. Irrespective of the outcome of the appeal, costs may only be awarded where a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process, as set out in Paragraph 030 of the *Appeals* section of the national Planning Practice Guidance ('PPG').
20. The application giving rise to Appeal C was for a gypsy/traveller site, being a use that had already begun. The application also included operations for a hardstanding that had been laid to facilitate the use along with prospective development in the form of a day room. Following refusal of that application the enforcement notices were issued against the existing unauthorised development i.e. the use and operations, leading to Appeals B and A respectively.
21. Originally, the application in Appeal C encompassed the whole plot belonging to the applicant. It comprised an area of hardstanding at the front of the site where the caravans in residential use are positioned and an area of land at the rear. It was revised to reduce the area to the land at the front only following invalidation. The subsequent enforcement notices outlined the entire area but described each breach in terms of the area where development had taken place.
22. The decision to refuse planning permission in Appeal C was taken by the Council's Development Committee on 28 June 2018 by reason of it amounting to inappropriate development in the Green Belt. The Development Committee was not bound to accept the Officer's recommendation to grant a time limited and personal planning permission. Indeed, the Committee would serve no function if it was unable to depart from an Officer recommendation. Clearly, however, its decision must be reasoned and justifiable having proper regard to both local and national policies and other material considerations.
23. Members of the Committee had before them a reasonably comprehensive report compiled by Officers on the revised application. It must be anticipated that Members read that report; there is certainly nothing to indicate that they did not. The report alerted Members to previous gypsy and traveller development which had been allowed on appeal within the Green Belt, being a designation covering most of the district. Those appeals turned on their own facts and circumstances prevailing at the time. They did not set an irresistible precedent.
24. The presenting Officer at the Development Committee meeting was able to explain to the Inquiry the matters discussed in the debate. This included concerns expressed by Members over the extent of the development in this particular locality. In the course of the appeal I have had the benefit of a

landscape and visual impact assessment and been able to hear evidence on appropriate mitigation. That same information was not before Members.

25. There was no dispute in the appeals that the development as applied for and enforced against amounts to inappropriate development in the Green Belt. Paragraph 143 of the National Planning Policy Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 goes on to provide that substantial weight should be given to any harm to the Green Belt. Members would have been aware of this.
26. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of the inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. These provisions were clearly set out in the Committee report. The developments were also intentional unauthorised development in the Green Belt which added to the weight against the grant of permission.
27. The Committee did not find the existence of very special circumstances to justify the grant of a permanent permission and nor did Officers.
28. The Officer report set out the personal circumstances to be considered including the best interests of the children in determining whether to grant temporary permission. Human rights considerations were capable of being considered in the balance without explicit reference in the report. In rejecting Officer's recommendation of a temporary permission, Members arrived at their view in light of the relevant information. Put simply, in exercising their planning judgement Members clearly did not attribute the same weight as their Officers. The fact that the Committee came to a different view does not mean that Officers were ignored or that Members acted unreasonably.
29. The reasons for the decision could have been more expansive but the term 'inappropriate development' does have specific meaning in the context of the Green Belt. It sufficed to inform the reader why the decision had been taken which was in accordance with the law given the weight attributed by national policy to the protection of the Green Belt. I find no reason to conclude that the decision was made improperly so as to delay a permission which should have been granted, even if for a temporary period.
30. Identification of the breach of planning control was not a matter for Members when considering the planning application. The enforcement notices obviously followed the refusal of planning permission. No justifiable criticism can be levied at the Council for separating out the unauthorised use and operations in two notices. Nothing prevents that approach. The same issues would arise regardless of whether the allegations were in one or two notices. As it was, the Council says it took that approach for clarity in light of the stop notice which was to follow for the operations only. That is reasonable.
31. The dust from the unfinished surface of the hardstanding was a symptom of unauthorised development. The applicant indicated in evidence that inconvenience arose from dirt getting inside the caravans rather than posing a health risk caused by the enforcement action.
32. The enforcement notice giving rise to Appeal B contains duplication and benefited from corrections but these factors did not warrant the notice being

quashed. At the Inquiry the applicant introduced arguments under ground (b). The accusation that Counsel for the Council had somehow been unprofessional by maintaining there were two planning units is completely unfounded. The Council Officers held differing views on the planning unit and on a matter of professional planning judgement the Council was fully entitled to take the stance that it did. Although I have found that a single planning unit existed when the enforcement notice was issued it does not follow that any other view is unreasonable. There was a strong argument that physical differences in character had been brought about by the development but they did not suffice in my view to justify splitting the land into two separate planning units.

33. A lot of Inquiry time was spent on issues pertaining to the ground (b) appeal. This could and should have been raised earlier which may well have reduced the time taken. As it was, the issue was easily correctable by reducing the area enforced against to the area where the unauthorised development had taken place which the Council had readily agreed at the outset. The applicant failed to provide any authority that such an approach was wrong in law, as claimed.
34. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that an award of costs is not justified.

KR Saward

INSPECTOR