
Costs Decision

Site visit made on 9 February 2021

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2021

Appeal Ref: APP/V1505/W/19/3238054

Land at Readers Yard & The Willows, Fobbing, STANFORD-LE-HOPE SS17 9HQ

- 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 R Longhurst for a full award of costs against Basildon Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for Three pitches for Gypsy/Travellers with associated amenity buildings, hardstanding and access from Moores Avenue in lieu of existing building and hardstanding.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030¹ of the *National Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 051² of the PPG states that awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
4. The applicant argues that the Council has failed to meet appeal deadlines, which has resulted in unnecessary time and expense. It is also argued that the Council was unreasonable in its decision to withhold permission and that its judgement was flawed in its assessment of the application.
5. A hearing was originally scheduled to be held on 11 February 2020 but illness prevented it from going ahead. Rescheduling was then delayed by COVID-19. The application for costs was made on 7 February 2020. I have assessed the Council's behaviour primarily in relation to the original hearing date of 11 February 2020. Although it has taken a further year for the appeal to be determined, this has not been due to any actions or omissions on the part of the Council.
6. The Appeals Procedural Guide sets out a timetable for the submission of documents from both parties. The start date for the appeal was 1 November 2019 and the Council's questionnaire was due within one week. It is dated

¹ Reference ID: 16-030-20140306

² Reference ID: 16-051-20140306

- 5 December 2019. The Council's statement and any statement of common ground should have been received before 6 December 2019 and to date have not been received. I note that subsequent correspondence indicates that the Council requested that the Inspectorate forward its copy of the Council's statement, but there is no statement in the evidence before me nor any indication that one has been received.
7. Although the Council had not submitted elements of its required evidence, third party correspondence was forwarded to the applicant by the Planning Inspectorate on 16 December 2019 with the covering letter that deadlines for the submission of evidence had passed and additional documentation would not normally be accepted. Further representations were forwarded by the Planning Inspectorate in May 2020.
 8. On 21 January 2020 the Council elected to concede the appeal as an application for three bungalows on the same site had been allowed at appeal³ on 23 December 2019.
 9. As such and notwithstanding the Council's belated submission of the appeal questionnaire I am unclear why the applicant considers that third party comments had not been made available. In any case, there is a summary of objections from interested parties in the officer's report.
 10. With regard to the failure to submit a statement and statement of common ground, at the time of submitting the application for costs the applicant had known for more than two weeks that the Council did not intend to contest the appeal. The acceptance of late evidence at the hearing would have been at the Inspector's discretion. Moreover, there was no additional evidence submitted.
 11. Reference is made to the need to keep records of correspondence with the Council but no records or evidence of supporting correspondence has been submitted. Nor is there any evidence of requests made to the Council that have not received a response.
 12. As such, although I am satisfied that the Council has failed to submit evidence, evidence which has not been submitted cannot be analysed. In any case, even if it had been submitted later than scheduled some of the time spent addressing that evidence would have been spent anyway, at whatever point statements were submitted. In this case, I am not satisfied that the Council's behaviour has resulted in unnecessary or wasted expense at appeal.
 13. The officer's report examines the likely effect of the development on openness and I have set out in my decision why I have reached a similar conclusion. Moreover, Planning Policy for Traveller Sites (PPTS) states that traveller sites are inappropriate development in the Green Belt. There are no exceptions in PPTS for development on PDL within the Green Belt. I see nothing unreasonable or prejudicial in the officer's report or its conclusions.
 14. The applicant argues that gypsy accommodation would be more open in character than bungalows. However, it remains that the Council refused the application for the bungalows, whatever the conclusions of and arguments within the associated officer's report. In any case, I see no inconsistency in this regard as three bungalows do not necessarily have the same impact on

³ APP/V1505/W/19/3235924

openness in the Green Belt as three amenity blocks and up to six static and touring caravans. This is set out in my decision.

15. I appreciate that the Council's withdrawal of objections to this appeal could indicate that it recognises it has made an error of planning judgment. However, it could also be seen as a pragmatic decision to avoid committing resources to an appeal it might see as having little chance of success. As I am unable to find flaws in the officer's report with regard to the discussion on openness, which takes account of case law and the guidance in the Framework, I am unable to conclude that the Council has acted unreasonably.

Conclusion

16. I am unable to conclude that the Council has acted unreasonably. As such, unreasonable behaviour leading to unnecessary costs at appeal has not been demonstrated. The application for an award of costs is refused.

A Blīcq

INSPECTOR