
Costs Decisions

Hearing Held on 12 May 2021

Site visit made on 13 May 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 May 2021

Appeal A: APP/N1920/W/20/3251634

Willows Activity Farm, Coursers Road, Colney Heath, St Albans AL4 0PF

- 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 Greg Lawson of Smart (Group) Ltd for a full award of costs against Hertsmere Borough Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for development described as temporary use of the car park for the siting of a marquee for corporate Christmas parties and parking for a period of 5 years between 18 November and the 29 December each year.
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Appeal B: APP/N1920/W/21/3270866

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Decisions

Appeal A

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

Appeal B

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

Reasons

3. The above applications for costs were made at the Hearing.
4. 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.

5. The applicant claims that the Council acted unreasonably in relation to all 3 of the reasons of both applications. This is on grounds which, with reference to the PPG, I categorise as:
- making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances; and
 - persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.

I shall structure my consideration of the claims below with reference to each of the reasons for refusal in turn.

Reason 1

6. The applicant states that in assessing the scheme the Council failed to properly undertake the Green Belt balance as set out within part 13 of the National Planning Policy Framework (the Framework). In this regard the Framework states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
7. The Council's use of terminology, and the structuring of its first reason for refusal were indeed inconsistent with the above. This is insofar as the second part of Council's first reason for refusal confuses 'other considerations' with 'very special circumstances', and implies that these were weighed individually as opposed to collectively. This is further reflected in the related reports. This failure to clearly adhere to the Framework was unreasonable. However, this appears to have been less a case of failures in decision making, than failures in presentation. Indeed, the Council's underlying reasoning and the mechanics of the balance evidently undertaken remain intelligible. Here the Council clearly placed less weight on the provision of a party venue and lack of an alternative location than did the Inspector in the previous appeal.
8. In this regard the previous appeal decision does not clearly set out or explain the previous Inspector's rationale in attaching significant weight to the provision of a party venue on the site, and the lack of alternatives. Indeed, the nature of, or linkage to any related benefit was not clearly identified or characterised within the decision. Nor is the underlying reasoning otherwise obvious. Uncertainty in this regard provided scope for the Council's contrary views, notwithstanding the fact that it otherwise failed to demonstrate that any change in circumstances had arisen.
9. My finding of unreasonable behaviour in relation to reason 1 is therefore partial, but I am satisfied that this did not cause the applicant to incur wasted or unnecessary expense in the appeal process.

Reason 2

10. The Council's second reason for refusal of both applications references conflict with the PPG in relation to repeated grants of temporary permission, explaining this in terms of the long-term harm to which repeated previous temporary

permissions have given rise. As set out in my main Decision, the PPG is a material consideration which attracts significant weight in this case, and any further grant of temporary permission would clearly have been in conflict with it.

11. The Inspector in the previous appeal acknowledged conflict with the PPG, and in that case justified granting permission on the basis that this would allow the Council to 'prevent' further use of the site should another site outside the Green Belt become available. The applicant has interpreted this as a 'review mechanism'. However, whether or not this was the previous Inspector's intention, at least some potential for change was identified. As set out in my main Decision, in the absence of any change in circumstances since 2014, and given the lack of any evidence that a change in circumstances is likely, the Council was correct to conclude that a further temporary permission could not be justified on the same basis. Indeed, whilst I have ultimately allowed the Appeals, I have done so granting permanent rather than temporary permissions.
12. As such, the Council did not behave unreasonably in refusing the application on the basis of conflict with the PPG.

Reason 3

13. With regard to access, the Inspector in the previous appeal found that the appeal site was a sustainable location. His assessment included consideration of road linkages to nearby towns, modes of transport, and drink driving. His reasoning was clearly intelligible.
14. The Council's third reason for refusal of both applications was nonetheless that the site's location would be unsustainable. Here the Council was entitled to reach a different view. However, in doing so the Council failed to either clearly or logically evidence the reasons for doing so.
15. Indeed, in placing a heavy emphasis on the site's lack of lit pavement and cycle connections, the Council appears to have failed to have proper regard to the nature of the development proposed, including the widely dispersed sources of its prospective users. Such an awareness clearly underpinned the previous Inspector's reasoning, as reflected in his finding that modes of transport other than car or coach would not be realistic.
16. In the absence of any other reason why the previous Inspector's view should no longer be considered valid, I find that the Council acted unreasonably in refusing both applications on the grounds set out in its third reason. Consequently, the applicant incurred unnecessary expense in addressing the third reason for refusal of the applications at appeal.

Conclusion

17. For the reasons outlined above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to the Council's third reason for refusal of both applications, and that a partial award of costs is justified.

Costs Orders

Appeal A

18. 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 Hertsmere Borough Council shall pay to Greg Lawson of Smart (Group) Ltd, the partial costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the third reason for refusal of planning permission; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Hertsmere 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.

Appeal B

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 Hertsmere Borough Council shall pay to Greg Lawson of Smart (Group) Ltd, the partial costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the third reason for refusal of planning permission; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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Benjamin Webb

INSPECTOR