



Costs Decisions

Inquiry Held on 19 May 2021 and 13-14 July 2021

Site visit made on 16 July 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2021

**Costs applications A and B in relation to Appeal Refs:
APP/B1550/C/18/3212763, APP/B1550/C/18/3215500 and
APP/B1550/W/18/3212735**

Land opposite 2 Goldsmith Drive, Rayleigh, Essex SS6 9QX

- The applications are made under the Town and Country Planning Act 1990, sections 78, 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mr Martin O'Brien for a full award of costs in respect of Costs Application A and a partial award of costs in respect of Costs Application B against Rochford District Council.
 - The inquiry was in connection with an appeal against two enforcement notices alleging separately the laying of hardstanding and the use of the land for residential purposes as a Gypsy and Travellers site including the stationing of caravans and an appeal against a refusal of planning permission for use of land as a Traveller Site.
-

Decisions

1. Costs application A is refused.
2. Costs application B is refused.

Introduction

3. Costs application A is dated November 2018 and was submitted prior to the inquiry. Costs application B is dated 19 May 2021 and was submitted following the adjournment of the inquiry on the first sitting day. The Council has had the opportunity to respond to both applications in writing and no additions to the claims for costs were made during the inquiry following the adjournment.

Costs Application A

The submissions for Mr O'Brien

4. The applicant says that following a site visit by the Council Officer the Council had before it amended plans and additional information about two of the children on the site. He adds that the Council was also aware of previous appeals which had been allowed because it did not have a 5-year supply of pitches and that it acknowledges that in the light of the lack of supply a temporary permission would be appropriate.
5. 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.

6. Due to a stop notice the applicant states that he has been unable to place 20mm of shingle at the site and the dust is causing respiratory problems for his children.

The response by Rochford District Council

7. The Council argues that the additional information which it requested was necessary for it to be able to validate the planning application.
8. The Council accepts that other appeals have been allowed in the District but considers that each case must be dealt with on its merits. The Council refers specifically to the Woodville appeal decision (Appeal Ref. APP/B1550/W/17/3174424) and says that this site is not occupied which brings into question the demand for sites.
9. It is acknowledged by the Council that the need for sites is a significant material consideration but in this case the Planning Committee reached a different conclusion than officers in terms of the weight attached to it and other considerations against the harm to the Green Belt.
10. The Council served two notices in response to the timeline of the alleged unauthorised development on the site specifically in the light of the planning application which had not been determined when the first notice was served and the fact that stop notices were served. The Council argues that this provided the applicant with a clearer understanding of the grounds on which he could appeal.
11. The Council also points to the different immunity periods for each breach of planning control and the differing penalty provisions in section 179 of the Act as reasons for issuing two notices.
12. In respect of the health issues arising from the applicant's inability to lay shingle on the site, the Council says that there is no information about the health implications of this or evidence to show that the laying of shingle would eliminate any dust issue.

Reasons

Background

13. Planning Practice Guidance (the Guidance) 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.
14. A local planning authority is at risk of an award of costs if, amongst other things, it prevents or delays development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. It must also produce evidence to substantiate each reason for refusal on appeal.

Cost Application A - Findings

15. I am satisfied that the Council's request for additional information was justified and necessary, in particular the provision of information about the children on the site was in the interest of the applicant.

16. The Council's decision to refuse the planning application which led to the service of the second enforcement notice was against officer advice. However, the committee report makes it clear to the decision makers that they should take account of the lack of supply of gypsy and traveller sites in the district. There is no evidence before me to suggest that the Councillors did not read the report or failed to take account of the issue of need for sites alongside other material considerations which were highlighted in it.
17. The committee members were also reminded of previous appeal decisions and advised to give significant weight to them. As above there is no evidence to show that the Councillor's did other than follow the officer's advice on this point.
18. The decision made by the Planning Committee was always going to be a matter of the balance between the harm to the Green Belt which is contrary to policy against the material considerations in the case. It is up to the decision maker to decide on the weight to be given to the various considerations. As explained by the Council's witness at the inquiry the committee members simply came to a different conclusion than officers, leading to the overturn of the officer recommendation.
19. The absence of the attendance of any of the Planning Committee members at the inquiry put the Council's witness in a difficult position because he had recommended the planning application be approved. Nevertheless, he was able to justify the position of the Committee members by reference to their opposing view on the Green Belt balance. In so doing he was able to substantiate the reasons for refusal.
20. There were delays in bringing the planning application before the Planning Committee, the reasons for which were not clear from the evidence provided at the inquiry. However, the outcome of the committee meeting demonstrates that it was also not clear that the application would have been permitted. Furthermore, the applicant could have exercised his right of appeal against non-determination.
21. Drawing all of these points together I do not find that the Council acted unreasonably in its determination of the planning application or its justification of the decision at appeal.
22. With regard to the fact there were two enforcement notices, the Council's explanation is robust and reflects the way in which the site has been developed. I do not find that the Council acted unreasonably in serving two notices. Even had I reached the view that this was unreasonable, bearing in mind that all three appeals have been dealt with together and the appeal submissions by the appellant have been dealt with comprehensively in single documents, it would be difficult to conclude that he had been put to extra costs, and the applicant has not shown that he has been put to extra expense.
23. The appellant had the opportunity to elaborate on the health of the residents of the site at the inquiry and he made no reference to any respiratory illnesses arising as a result of the lack of shingles on the hardstanding. Whilst delays in dealing with the planning application or appeals would lead to any health impacts continuing for longer, the Council did not act unreasonably in serving the stop notices which were justified given the location of the site in the Green Belt.

Costs Application A - Conclusion

24. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Policy Guidance, has not been demonstrated and that an award of costs is not justified.

Costs Application B

The submissions for Mr O'Brien

25. The applicant refers to the adjournment of the inquiry on 19 May 2021 because of the Council's failure to properly notify interested parties under the Inquiry Regulations. He argues that Counsel and witnesses were put to the expense of preparing for the inquiry and attending the offices of WS Planning and Architecture. He wants to claim the wasted costs of that day, which is a partial claim for costs.

The response by Rochford District Council

26. The Council contends that it should have been able to rely on the wording of the site notice sent to the Council and the appellant by the Planning Inspectorate.
27. The Council argues that as the appellant also treated the site notice as correct and displayed it on the land i.e. that he did not raise concerns about it until the inquiry was opened, he should not characterise the Council's conduct as unreasonable.
28. As soon as the Council became aware of the defect that led to the adjournment of the inquiry it took action to remedy the defect. Although this did not satisfy the Inspector (me) the Council did not act unreasonably in doing so.

Reasons

Background

29. As in the case of Costs Application A, the Guidance 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. Of relevance to Costs Application B is that local planning authorities and appellants are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process.
30. A local planning authority is at risk of an award of costs if, amongst other things, it fails to notify the public of an inquiry or hearing, where this leads to the need for an adjournment

Cost Application B - Findings

31. The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 (the Inquiry Rules) provide for the Secretary of State to require local planning authorities to notify interested parties and post a site notice and to require appellants, where the land is under their control, to post a site notice. This responsibility lies with the local planning authority and the appellant accordingly.

32. The required contents of the notification to interested parties and the site notice are set out in section 9, paragraph 7 of the Inquiry Rules. These include at 9(7)(c) that the notification/site notice contains 'a brief description of the subject matter of the appeal'. This was the part of the site notice which was sent to both parties by the Planning Inspectorate which was missing/unclear. The site notice referred to all three appeals but not the detail of those appeals.
33. The site notice was sent to the Council under copy of an email which also set out the required contents of the notification letter which again referred to a brief description of the subject matter of the appeals. However, the Council used the site notice details for their notification letter to interested parties, which did not contain this information on all three appeals.
34. It is unfortunate that the site notice which was sent to the parties did not meet the requirements of the Inquiry Rules. However, it is the responsibility of the Council to post the site notice and send out the notification letters. It follows that it should have been more diligent in checking the accuracy of the site notice and whether using it as a basis for the notification letter fulfilled the requirements of the Inquiry Rules.
35. The Council are correct in suggesting that the appellant also had a copy of the site notice and that he could have raised concerns about it before the inquiry opened, thus potentially avoiding the costs of an adjournment. However, this does not absolve the Council of its duty. Nevertheless, given the experience and role of the Planning Inspectorate there is merit in the argument that the Council, and the appellant, should have been able to rely on the site notice which was sent them being clear and complete.
36. The Council did act promptly in trying to notify interested parties to resolve the issue but there was insufficient time for this to be effective in ensuring that interested parties had the opportunity to be fully involved.
37. Drawing all of these strands together, whilst the adjournment did result in additional costs for the appellant these did not arise solely from the actions of the Council. The appellant had professional advice with knowledge of the Inquiry Rules, thus it is reasonable to assume that had they noticed the error in the notice they could have brought it to the attention of the Council. In this context, the Council's actions do not amount to unreasonable behaviour.

Costs Application B - Conclusion

38. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Policy Guidance, has not been demonstrated and that an award of costs is not justified.

Sarah Dyer

Inspector