



Costs Decision

Site visit made on 14 June 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2022

Costs application in relation to Appeal Ref: APP/W4325/3291997

Birkenhead School Noctorum Field, Noctorum Road, Noctorum CH43 9UQ

- 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 Birkenhead School for a full or partial award of costs against Wirral Metropolitan Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the demolition of the existing pavilion and erection of up to 33 dwellings and associated infrastructure. All matters are reserved with the exception of access.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. The PPG states that in any appeal against non-determination, the local planning authority should explain why permission would not have been granted had the application been determined within the relevant period.
4. The applicant's concerns relate to the Council's alleged failure to apply the findings in *R. (on the application of Martin John Brommell on behalf of Mapledurham Playing Fields Action Group) v Reading Borough Council & Secretary of State for Education* [2018] EWHC 3529 (Admin). It is asserted that the Council acted contrary to, or did not follow well-established caselaw that was presented to the Council before it determined to defend the appeal. The applicant also contends that had the Council not advanced an objection to the loss of the playing field, it would have approved the development.
5. Amongst other things, the Mapledurham case addresses the test at Paragraph 99 b) of the National Planning Policy Framework (the Framework). It provides an exception relating to the protection of sports fields when 'the loss resulting from the proposed development would be replaced by equivalent or

better provision in terms of quantity and quality in a suitable location'. It confirms that the test is whether 'equivalent or better provision' arises. It clarifies that, quantitative and qualitative aspects of open space provision should be assessed and are potentially interchangeable as a matter of planning judgement.

6. On fair reading of the report to the Council's Planning Committee, it seems to me that, a balanced approach to the assessment of whether better or equivalent provision would arise took place.
7. I recognise that there is dispute between the parties as to how the Mapledurham case should be applied in this instance, and the extent of its relevance in the contrasting circumstances of the cases. I also note the potential to interpret Sport England's own policies differently from those in the Framework. This appears to be noted at paragraph 3.6.14 of the Council's Planning Committee report.
8. However, having rehearsed the benefits of the proposals as qualitative improvements – a method of enhancement recognised by the Wirral Playing Pitch and Outdoor Sports Strategy (PPOSS), the report confirms that, consistent with the Framework's definition of a playing field, no new sports field would be provided. It explains that the proposals at the grounds where compensatory enhancements would take place would overlie existing sports field areas including at the Prenton ground.
9. Paragraph 3.6.19 of the report gives credence to the applicant's qualitative approach but concludes that it would not reach the benefits of new (replacement) pitch provision. The Council makes the point that, as matter recognised in the PPOSS, enhancing pitch quality does not necessarily increase availability for use, particularly at peak demand times.
10. There is nothing in the Council's appeal statement that excludes a balance between quantitative and qualitative elements as being capable of off-setting the proposed loss. As above, the report finds that, in using only existing sites whereupon 'new' pitch provision would overlie existing pitches or training areas, there would be no replacement for the loss of the existing pitch/es. Additionally, with limited detail of how far the proposed enhancements would facilitate increased use at the sites, there was little to demonstrate how the proposal would compare to a new (replacement) pitch providing quantitative easing of overall demand following the loss of the existing site.
11. Although there is a clear preference for maintaining or increasing pitch numbers, there is little to suggest that an area of at least equivalent size to the field lost would be required. Paragraph 3.6.22 subsequently concludes on the 'package' of proposed mitigation against the loss of 1.9 Ha. at the appeal site. Moreover, in commenting on Sport England's suggestion of a replacement facility elsewhere, the Council excludes reference to a minimum size but does refer to a qualitative replacement (paragraph 3.6.23).
12. Whilst there is no explicit mention of the Mapledurham case in the report, given that both quantitative and qualitative measures were considered with some apparent flexibility, I see little reason as to why that would be necessary.
13. For the above reasons, it appears to me that the Council's assessment goes beyond simply seeking a replacement of the existing field by delivery of a field

of equal or greater size, or an equal number of new replacement pitches. Therefore, notwithstanding that it has argued that the Mapledurham case is not directly comparable, I find due consideration to its principles was applied and the Council was entitled to find as it did as a matter of planning judgement.

14. I note the applicant's claim that the Council's reliance on the PPOSS was unfair and unreasonable. The document was not initially available to the applicant. I also note that there was little corroboration between the main parties in the development of that document. Nevertheless, as a ratified document for informing emerging policies in a new local plan for the locality, the content of which is largely uncontested by the appellant, I found that the document was entitled to considerable weight in the appeal.
15. The Council's resolution indicated that it would have refused the proposal on other grounds. Notwithstanding my own findings, those reasons were supported in the Council's report and statement. I find little demonstration of unreasonable behaviour in regard to those matters.
16. Taking all of the above together, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Hitchcock

INSPECTOR