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## Costs Decision

Hearing Held on 22 June 2022

Site visit made on 22 June 2022

**by Helen B Hockenhull BA (Hons) B.PI MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28<sup>th</sup> July 2022**

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### **Costs application in relation to Appeal Ref: APP/L3815/W/20/3254057 3 Melita Nursery, Chalk Lane, Sidlesham**

- 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 Messrs W Hughes and M Goddard for a full award of costs against Chichester District Council.
  - The hearing was in connection with an appeal against the refusal of grant subject to conditions of planning permission for the change of use of land to rear of dwelling for siting of residential caravans for 7 no. pitch Gypsy Traveller site with associated development (hardstanding, fencing and 3 no. utility buildings).
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### **Decision**

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

#### **The submissions for Messrs Hughes and Goddard**

2. A written application for costs was submitted before the hearing. The case is made in relation to substantive behaviour, that the Council prevented or delayed a development which should clearly be permitted, having regard to the accordance with the development plan, national policy and other material considerations. It is also argued that the Council failed to produce evidence to substantiate each reason for refusal and provided vague, generalised and inaccurate assertions about the proposal and its impact unsupported by objective evidence.
3. In summary, the following detailed arguments were put forward:
  - That Members failed to undertake a site visit and relied heavily on what objectors said without checking for themselves;
  - That the Council failed to have regard to national guidance in the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS);
  - That the Council misapplied Policy 36 of the Local Plan;
  - That the Council failed to have regard to a recent appeal decision at Keynor Lane;
  - That the Council claimed the proposal would result in noise and disturbance without reference to reports, evidence or advice from Environmental Health Officers;

- In regard to concerns about the perception of dominance, the Council relied on information from third parties which was in fact incorrect;
- That the Council failed to justify why surface water drainage matters could not be dealt with by condition;
- That the Council failed to consider a temporary permission.

### **The response by Chichester District Council**

4. A written response was provided in advance of the hearing. I discuss the points made in my reasoning below.

### **Reasons**

5. 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. I deal with the applicants' arguments in turn.

#### *Site visit*

6. In considering the application, Members of the Planning Committee did not undertake a site visit. At the virtual Committee meeting, Council Officers showed a presentation with photographs of the site to give members an understanding of its character and that of the surrounding locality. I understand that the meeting was held during the Covid pandemic when various restrictions were in place. There is no requirement for the Committee to visit a site and whilst they could have resolved to defer the application for a visit to be made, the Members felt they had enough information, as well as their own local knowledge of the area, to make a decision. This does not constitute unreasonable behaviour.

#### *Consideration of national guidance*

7. The Council Officer report and the Statement of Case submitted with this appeal, refer to the Framework and also the PPTS. It is clear that regard was had to both documents. In refusing planning permission, the Members came to different conclusions and attached different levels of weight to these documents than Officers. I note that no reference was made to paragraph 105 of the Framework, which makes a distinction between sustainability in urban and rural areas. That said, the Council did consider the location of the site and the access to services and facilities. Whilst Members took the view that the site was unsustainable, contrary to my conclusion, their position has been substantiated. I have no evidence that, in coming to their decision, the Council did not have regard to the NPPF and the PPTS.
8. I also note that the Council did not refer to section 11 of the Framework which relates to the effective use of land. The reason for refusal did not suggest that the proposal would be contrary to this policy guidance. It is a matter of judgment which elements of national planning policy are relevant in this case. The efficient use of land was not raised until the hearing itself, when the Council explained that an assessment was being undertaken as part of the preparation for the Gypsy and Traveller Development Plan Document, to assess the potential for intensification of existing sites. Whilst this has some relevance

to the appeal case, it is not determinative. Given the above, I am not persuaded that the Council did not have regard to national policy or the PPTS. The conclusions made, which may differ from the ones I come to in my decision, were a matter of judgment.

#### *Policy 36 and the Keynor Lane<sup>1</sup> decision*

9. Turning to the application of Policy 36, I have discussed in my decision that the policy does not seek to restrict traveller provision to defined or recognised settlements. Rather it states that sites should be either within or close to such a settlement or have good access to major roads and /or public transport. It is not disputed the appeal site lies within the settlement. It is accepted that the services and facilities in the village are limited, but future occupants would have access to schools, a petrol filling station with shop as well as a bus route. The proposal would therefore comply with criteria 1 of the policy. I agree with the appellant that the reference in the Council's first reason for refusal to 'recognised settlements' misinterprets this policy.
10. The Council's Statement of Case refers to the Keynor Lane decision in paragraph 4.10, in particular the Inspector's findings with regard Sidlesham as a settlement and the application of LP Policy 36. It is stated that regard has been had to this appeal decision. However, this is not borne out by the wording of the Council's first reason for refusal. There is no evidence before me that the Council had proper regard to this decision.
11. In terms of the consideration of and application of Policy 36, I find unreasonable behaviour. The Council has therefore prevented or delayed a development which should clearly be permitted resulting in the appellant incurring unnecessary expenditure in the appeal process.

#### *Noise and disturbance*

12. Reason for refusal 2 refers to an uncharacteristic increase in noise and disturbance resulting from the development causing harm to the tranquil character of the countryside. Chalk Lane is a mixed-use area with both residential and commercial uses. Whilst it is a quiet area, it is not remote from other uses or activities. I have no evidence before me about the tranquil nature of the area and why it is worthy of such protection. At the hearing the Council explained that their main concern related to traffic noise and general activity from residential uses. I have not been provided with an assessment of the likely increase in traffic from the development, the level of noise generated, when such noise would occur and whether there are any mitigation measures which would address the issue. I also have no evidence to explain what is meant by general disturbance and how it would impact on tranquillity.
13. Accordingly, I conclude that the Council has failed to substantiate its second reason for refusal. This constitutes unreasonable behaviour and has resulted in the appellant having to provide evidence on this matter to support their case, thereby incurring unnecessary expense in defending the appeal.

#### *Perception of dominance*

14. In respect to the matter of perception of dominance, the Committee heard from the Parish Council who provided figures of the number of gypsy pitches in

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<sup>1</sup> APP/L3815/W/18 3209147 and 3209145

the area which it thought to be correct. No comparable figures were included in the Officers Committee report, rather a conclusion was given that a total of 15 pitches on the site would not dominate the existing settled or gypsy communities. Members will have had regard to the comments of third parties in coming to their decision. However, these figures were not verified. The Council therefore relied on vague and inaccurate assertions.

15. It is also unclear to me why the Council considered that the proposal would give a 'perception of dominance'. The Council have failed to explain how the scheme would impact on dominance, and why or how dominance would be 'perceived'. No objective analysis has been provided about the level of increased activity, traffic levels, background noise. The reason for refusal refers to a high-density development however no assessment or explanation is given to the existing densities, comparisons with other approved plots, what density would be acceptable, are any standards being applied.
16. Given the above, I conclude that the Council relied on vague and inaccurate assertions and failed to substantiate its first reason for refusal. In line with paragraph 49 of the PPG this constitutes unreasonable behaviour.

#### *Drainage*

17. Turning to the third reason for refusal regarding drainage, I note from the Committee report that the Drainage Engineer concluded that should the application be approved, conditions should be imposed requiring further details to be submitted. He did not recommend that due to the lack of information provided, the scheme be refused. The Council have failed to substantiate why this matter could not have been dealt with by condition. Paragraph 4.26 of the Statement of Case concedes that this approach is commonplace and indicates that that this would now be acceptable to the Council. The Council refused permission on a ground capable of being dealt with by a condition. This forms unreasonable behaviour.
18. The wording of the drainage condition put forward by the Council requires winter ground water monitoring. At the Keynor Lane appeal the Inspector considered this was not necessary as it would delay implementation of the scheme. The Council argues that this condition as drafted is necessary due to the scale of the development in this case, 7 pitches, which is considerably greater than the 3 pitches allowed on appeal at Keynor Lane. I acknowledge that monitoring information could have been collected by the appellant in winter 21/22 and then submitted in evidence as part of the appeal. However, given that the site is in Flood Zone 1, I do not consider it reasonable to expect this to have been undertaken. I have agreed with my fellow Inspector that winter monitoring is unnecessary. The imposition of a condition that is unnecessary is a form of unreasonable behaviour as defined in the PPG.

#### *Temporary permission*

19. The applicant also argues that the Council failed to consider a temporary permission, despite the significant unmet need in the District, the difficulties experienced during the Covid pandemic and with no regard for the fact that the Council was taking court action over an unauthorized site in Birdham. I acknowledge that there is no requirement for members to consider a temporary permission. The appeal proposal was speculative and personal circumstances of any occupants were not presented to support the scheme. It

was therefore not unreasonable for the Council not to consider a temporary condition. Had evidence been presented that displaced families from the Birdham site were likely to be the future occupants, then consideration of a temporary permission taking account of their personal circumstances would have been appropriate. In light of the above, I consider that the Council did not act unreasonably in this regard.

### **Conclusion**

20. The applicant put forward several arguments to support the substantive grounds in the application for costs. Whilst I have not agreed with all of them, taken as a whole, I find that unreasonable behaviour has been demonstrated, resulting in the appellant incurring unnecessary or wasted expense, as set out in PPG. A full award of costs is justified.

### **Costs Order**

21. 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 power in that regard, IT IS HEREBY ORDERED that Chichester District Council shall pay to Messrs W Hughes and M Goddard the costs of the appeal proceedings described in the heading of this decision.
22. The applicants are now invited to submit to Chichester District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Helen Hockenhull*

INSPECTOR