



Costs Decisions

Hearing Held on 10 May 2022

Site visit made on 10 May 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2022

Costs application in relation to Appeal A1 Ref: APP/L3815/C/21/3267980
Costs application in relation to Appeal A2 Ref: APP/L3815/C/21/3267981
Land North West Of Newbridge Farm, Salthill Road, Fishbourne PO19 3PY

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application in relation to Appeal A1 is made by Mrs Leanne Strudwick and the application in relation to Appeal A2 is made by Mrs Krystle Gibbs for a full award of costs against Chichester District Council.
- The hearing was in connection with an appeal against an enforcement notice alleging the material change of use of the land to use as a residential mobile home/caravan site.

Costs application in relation to Appeal B Ref: APP/L3815/W/20/3255630
Land at Salthill Farm, Fishbourne PO19 3PX

- 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 & Mrs Strudwick and Mr & Mrs Gibbs for a full award of costs against Chichester District Council.
- The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for "the change of use of land to a travellers caravan site consisting of 4 no. pitches each containing 1 no. mobile home; 1 no. touring caravan, 1 no. utility dayroom; play area & associated development."

Costs application in relation to Appeal C Ref: APP/L3815/W/20/3255630
Land at Salthill Farm, Fishbourne PO19 3PX

- 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 & Mrs Strudwick and Mr & Mrs Gibbs for a full award of costs against Chichester District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for "the change use of land to a travellers caravan site consisting of 3 no. pitches, each containing 1 no. mobile home; 1 no. touring caravan; 1 no. utility dayroom; play area and associated development."
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Decision

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

Reasons

2. 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. Costs may be awarded for substantive or procedural reasons. In this case, it is suggested that the reasons are substantive, relating to the issues arising from the merits of the appeal. This can include that development which should clearly be permitted having regard to national and local policy or guidance is prevented or delayed, where there are vague, generalised or inaccurate assertions about a proposal's impact and where a more helpful approach would probably have resulted in the appeal being avoided.

3. My attention has been drawn to another appeal decision¹ for a site in Sidlesham where costs were awarded against the Council. In that case, the Council accepted Policy 36 of the LP was the main policy relating to gypsies and travellers and that, if the development complied with that policy, it should be granted planning permission. It was clear in that case that if the criteria in Policy 36 of the LP were satisfied, there would be no conflict with Policy 45 of the LP.
4. In that case the Inspector concluded the development accorded with the first criteria of Policy 36 of the LP relating to proximity to local services. The cases differ, including in relation to the nature of the settlements. Sidlesham was described as a disbursed settlement in which the site was located, whereas Fishbourne is more contained and this site is located outside the settlement. For these reasons, these two cases are not directly comparable. However, I note in that case it was stated "gypsy uses by nature tend to be located in more rural settings".
5. The Officer Report in relation to appeal C suggests that the site is divorced from Fishbourne, within the open countryside and not well related to existing settlements with local services and facilities, such that it does not comply with Policy 36 of the LP. They did not consider this issue against other policies of the LP. The issue is whether that reasonably reflects the requirements of Policy 36 of the LP. That policy requires gypsy and traveller sites to be well related to existing settlements with local services and facilities. The next sentence defines that as either within or close to those settlements or with good access to major roads and/or public transport. The planning policy for traveller sites states that new traveller site development in open countryside that is away from existing settlements should be very strictly limited.
6. The Officer Report sets out that the site is within open countryside as it is outside built up area boundaries. It sets out the nature of the single-width unlit track providing access to the site. It sets out the location of the site in terms of the distance to the edge of Fishbourne, the station and primary school. They suggest this is a significant distance such that it is not well related to existing settlements.
7. However, the report does not mention the bus stop at the end of the access track. In addition, the distances listed are short so, in the context of a use that tends to be located in rural settings, it is hard to understand how the location of the development could be anything other than close to, and not away from, the settlement. As a result, I consider that the Council failed to correctly apply Policy 36 of the LP and the planning policy for traveller sites insofar as they relate to the developments' relationship with settlements, services and

¹ Appeal and Costs Decisions APP/L3815/W/18/3209147 and APP/L3815/W/18/3209145

- facilities. That was unreasonable. In having to respond to this issue, the appellants have incurred unnecessary or wasted expense in the appeal process.
8. I note that this issue was not referred to in the enforcement notice. This indicates that the Council did not consider, at that stage, that this was a reason for issuing the notice. That supports my conclusion that this was unreasonably raised as a reason for refusal of the planning application subject of appeal C. As such, its consideration in relation to all three appeals was unreasonable.
 9. The other main issue relating to the effect on landscape and scenic beauty was not raised in the context of Policy 36 of the LP. The development plan, in this case comprising the LP, needs to be considered as a whole. Consequently, it is possible that conflict with policies other than Policy 36 of the LP could lead to a conclusion that the proposal would be contrary to the LP as a whole.
 10. The question of the effect on landscape and scenic beauty is subjective. The Council's view was that there were impacts and I have addressed these in my decision. Whilst I have come to the conclusion that the development does respect the intrinsic character and beauty of the landscape, there is nothing unreasonable in taking a contrary view.
 11. Given their conclusions on the intrinsic character and beauty of the landscape, it was not unreasonable of the Council to suggest that the proposal conflicted with Policies 45 and 48 of the LP or the Framework. It is for the decision maker to determine the weight to be given to those conflicts and conclude whether or not that means the proposal would conflict with the development plan as a whole. I see no reason to consider that the Council would not have done that correctly irrespective of the issue relating to the proximity to local services. Consequently, I will not award costs against the Council relating to this matter.
 12. I understand that the reasons Councillors gave for seeking to refuse the application related to the effect on the safety of the highway contrary to Policy 36(2) of the Chichester Local Plan (LP). That did not feature in the eventual reasons for refusal. However, the application was recommended for refusal by Officers for other reasons. The minutes don't refer to those other reasons, but it is reasonable to infer that Councillors agreed with them. In addition, the minutes of the meeting are not verbatim, so other matters may have been discussed that may be reflected in the reasons for refusal. It is perfectly proper for the committee to have delegated the reasons back to Officers to determine. Officers clearly considered the effect on the safety of the highway couldn't be supported, so the application was refused only for the reasons recommended in their report. The appellants suggest that indicated the Council acted in bad faith. Whilst there may be some ambiguity to the process to determine the reasons for refusal without referring back to the committee, on balance I consider that the actions of the Council were not unreasonable in this regard.
 13. The appellants had understood from discussions with a Council Officer that the application subject of appeal B would be supported. However, recommendations on planning applications are subject of discussion between Officers. Whilst the Officer responsible for processing an application may be supportive, they may not persuade their managers who bear ultimate responsibility for making recommendations to committee. The Council suggest that the recommendation of Officers is as a "team" rather than individuals. I understand why applicants may be upset when the team or manager's view

differs from that of the individual responsible for processing the application, but that is not unreasonable.

14. This application was called to committee by a local member. It was suggested that this was due to exceptional local interest. The Council are adamant that there was such local interest in this case and that the decision to call it in was in accordance with the Council's constitution. It is not for me to determine how to interpret the constitution, which hasn't been provided to me in any event. They suggest Councillors may assess public interest other than on the basis of number of objectors. I consider that the number of objections does not necessarily indicate the strength of objections, nor whether they are well-founded. It seems to me that the location of the site, divided from Fishbourne by the busy and noisy A27, means that it is unlikely that more than a small number of people could be affected by the development. The decision to call the application to committee appears to be based on the strength of objections that the local member considered to be well-founded. That was not unreasonable.
15. My attention has been drawn to disparaging comments made by Members of the Committee. That was subject of a complaint to the Council, following which an apology was made to the appellants and I understand that Councillors were given appropriate training. Whilst it appears that the Council have accepted their behaviour was unreasonable, I understand they have dealt with that and issued an apology. That did not appear to affect the decision on the planning application or the decision to issue an enforcement notice. Consequently, it did not lead to unnecessary or wasted expense in the appeal process.
16. For these reasons, I conclude that the Council have not acted unreasonably, except in the manner in which they dealt with the issue as to whether the development is in a suitable location in terms of access to services and facilities. I will award costs solely in relation to that issue.

Costs Order

17. 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 Chichester District Council shall pay to Mr and Mrs Strudwick and Mr and Mrs Gibbs, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the first main issue regarding whether the development is in a suitable location in terms of access to services and facilities; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is 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 agreement as to the amount.

AJ Steen

INSPECTOR