
Costs Decisions

Inquiry Held between 2 and 8 August 2022

Site visit made on 5 August 2022

by Louise Crosby MA MRTPI

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

Decision date: 29th September 2022

Costs application A in relation to Appeal Ref: APP/W0340/W/22/3292939 Land at Ermin Street, Lambourn Woodlands, Hungerford, RG17 7TR

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by West Berkshire Council for a partial award of costs against Mr R Clark.
 - The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for change of use of land for the siting of 1 mobile home and 1 touring caravan.
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Costs application B in relation to Appeal Ref: APP/W0340/W/22/3292939 Land at Ermin Street, Lambourn Woodlands, Hungerford, RG17 7TR

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Clark for a partial award of costs against West Berkshire Council.
 - The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for change of use of land for the siting of 1 mobile home and 1 touring caravan.
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Costs Application A

Decision

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

Reasons

2. 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. I shall deal with allegations of unreasonable behaviour under the headings set out on the Council's written costs application.
3. PPG¹ advises that, "appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process". Examples of

¹ Paragraph: 047 Reference ID: 16-047-20140306

unreasonable behaviour which may result in an award of costs include resistance to, or lack of co-operation with the other party in providing information, delay in providing information, only supplying relevant information at appeal when it was requested, but not provided, at application stage; introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not have otherwise arisen.

4. Importantly any unreasonable behaviour must have resulted in the Council incurring unnecessary expense for an award of costs to be made. I shall consider the Council's claims on this basis.

Provision of new information, assessments, and evidence

5. A number of documents were submitted during the appeal process that were requested by the Council during the determination of the planning application. These include a Preliminary Ecological Appraisal (PEA) a Biodiversity Net Gain spreadsheet to support the PEA, results of a data search used to inform the previously submitted PEA, an e-mail from the appellant's ecologist advising that the TVERC report does not change the conclusions or recommendations of the PEA previously provided, a noise impact assessment (NIA), landscape and visual impact assessment (LVIA) and a personal statement.
6. No reasonable justification has been provided by the appellant as to why the information submitted at appeal stage could not have been submitted at the planning application stage. Moreover, the appeal was submitted on 16 February 2022, well in advance of the deadline to submit an appeal of 26 July 2022. The submission of the appeal could have been delayed until the further evidence was available.
7. The additional information was submitted incrementally between 27 May 2022 and 28 June 2022. The latter date was the deadline for the submission of proofs of evidence when 4 pieces of additional information were submitted, including the LVIA and the personal statement which contained vital information about the appellant in terms of whether he met the PPTS Annex 1 definition of gypsy and traveller.
8. I will deal with each piece of late evidence in turn, dealing first with ecology and the late submission of the PEA, BNG metric, TVERC data and update to the PEA, the appellant had been made aware of the need to provide this information by email during the determination of the planning application. In addition, it is clear that even when the appellant did receive the PEA, BNG metric, TVERC data and the update to the PEA at the appeal stage he delayed sending it to the Council, in some instances by weeks, despite the Council repeatedly requesting it.
9. This could have been resolved at the planning application stage had the appellant submitted the necessary reports requested by the Council and required by Housing and Site Allocations DPD policy TS3 (detailed planning considerations for traveller sites) which requires the submission of various evidence including an extended phase 1 habitat survey together with further detailed surveys arising from that as necessary. It also advises that appropriate avoidance and mitigation measures will need to be implemented, to ensure any protected species are not adversely affected and that appropriate mitigation to offset impact on key species and habitats through appropriate buffering, on-site mitigation and off-site compensation measures will be necessary.

10. Despite the appellant's own evidence advising that a Section 106 agreement was needed to cover off-site compensation measures the appellant initially said such an agreement was not necessary, but then late in the appeal process changed his mind.
11. The late submission of the ecological evidence meant that the Council had to cover the matter in a general planning rebuttal statement. It also required last minute discussions about suitable conditions and the checking of the appellant's unilateral undertaking (UU). This could have all been dealt with well in advance of the proofs of evidence. The behaviour was unreasonable, and it resulted in the additional cost to the Council of considering the new evidence as part of a rebuttal proof. Whilst the late submission of the UU necessitated the Council having to deal with it at the last minute, when they were busy with other matters, and some officers on leave I do not consider it resulted in the Council incurring additional expense.
12. In terms of the noise evidence, the noise impact assessment (NIA), was submitted on 7 June, however the appellant had previously advised the Council that it would not be ready until 28th June. Consequently, the Council's acoustic consultant prepared his proof of evidence prior to the submission of the NIA on 7 June, due to other work commitments, and then provided a rebuttal proof after the exchange of proofs on 28 June 2022.
13. In this situation it would have been helpful if the appellant had told the Council that he would be able to submit the noise evidence earlier than originally indicated, but it seems that may have still meant it necessary for the Council's witness to submit his statement on 7 June and deal with the new evidence through a rebuttal because of his other work commitments.
14. However, again critical evidence was not submitted at an appropriate time by the appellant. His supporting statement submitted with his planning application acknowledged the need to consider the health and wellbeing of his family and in particular the effects of noise and air pollution. He had months to prepare it, both at the planning application stage and prior to submitting the appeal and his statement of case. Instead, it was submitted 3 weeks before the proofs of evidence were due, which is wholly unreasonable. This necessitated the Council providing a rebuttal statement on noise.
15. In addition to this, during the Inquiry the appellant added to his evidence. The Inquiry heard part way through the round table discussion on noise that the appellant had ordered a new caravan which would meet British Standards for sound insulation. This was a critical piece of information to the Inquiry and one which was pivotal to the noise issue.
16. In terms of the unnecessary costs incurred by the Council, I agree that if the appellant's noise evidence had been submitted in a timely manner, there would have been no need for the Council's noise witness to prepare a rebuttal proof. In terms of the additional time spent at the Inquiry dealing with the matter of the new caravan, this was negligible, and it did not result in any timetabling issues which led to the Inquiry sitting longer than originally planned.
17. Turning now to the LVIA, policy TS3 also advises of the need for a LVIA in accordance with the Landscape Institute Guidelines for Landscape and Visual Impact Assessment 3rd ed. 2013. This was also not provided until 28 June 2022. The late submission of this necessitated the Council commissioning their

own LVIA and their expert witness preparing a rebuttal proof to deal with the appellant's LVIA which was only submitted on the date the proofs of evidence were due. This represents unreasonable behaviour which resulted in unnecessary costs for the Council.

18. In terms of the personal statement, this should and could have been submitted at the planning application stage and if not then, with the appeal statement of case. The very late submission of the personal statement constitutes unreasonable behaviour, and it necessitated a rebuttal statement by the Council's gypsy and traveller expert witness to deal with the matters is raised, including the appellant's gypsy status. This was an additional and unnecessary cost the Council had to bear.
19. Finally in terms of the statement of common ground (SoCG), the appellant's unreasonable behaviour on this matter follows a similar pattern to that above, with significant delays in the appellant responding to the draft SoCG. It seems there was at one point a delay of 2½ months in responding to the Council on the draft SoCG. SoCGs are extremely important documents in planning appeals and are designed to save all parties time and money. Whilst I can see that this behaviour must have been extremely frustrating for the Council I am satisfied that there were very minimal additional costs associated with this for the Council.

Timetable Discussions

20. At the CMC meeting I requested that the main parties worked together collaboratively to agree timings for the Inquiry by 5 July 2022. The Council tried hard to do this but were unable to do so because of a lack of cooperation on the part of the appellant. This resulted in the last minute urgent resolution of this matter by all parties, including myself.
21. The unreasonable behaviour of the appellant in this regard was extremely frustrating for both the Council and me. There were quite a lot of e-mail exchanges to resolve the timetabling issues, and these were time consuming to deal with as was the work necessary to ensure that the timetable which was being discussed was appropriate and resulted in the best use of the Inquiry time. This came at a time when officers would not have it scheduled in their diaries because of the late and unpredictable nature of it. It will also have required discussions with a number of other parties such as Counsel. The extra hours that this would have been likely to necessitate would have been at a cost to the public purse and therefore unnecessary expense.

Late Requests for Information

22. During the round table sessions at the Inquiry the Council alleges that the appellant requested a lot of additional information about the site at the Four Houses Corner site. However, some of this information was also requested by me and was necessary to understand the complex situation at Four Houses Corner site. The Council could have predicted that some of this information would be required as it was the sort of information commonly sought in gypsy and traveller appeal cases. In my view this did not constitute unreasonable behaviour.

Conclusion

23. I am in no doubt that the appellant acted in an extremely unreasonable manner during the course of this appeal. I have been provided with evidence of around 30 emails from the Council to the appellant trying to resolve various matters throughout the course of the appeal. Many follow previous e-mails because they have received no response from the appellant. Council officers do not have the time or resource to deal with appeals in this way and nor should they have to. The appellant argues that the request for some of the information was disproportionate for a single caravan. I disagree, given its location next to a busy motorway in open countryside and within an area of outstanding natural beauty.
24. I therefore for the reasons set out above find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

25. 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 Mr Roy Clark shall pay to West Berkshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing a noise rebuttal, preparation of a LVIA and a landscape rebuttal and rebuttals to deal with the appellant's personal statement and ecology as well as dealing with late timetabling issues; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mr Roy Clark, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Costs Application B

Decision

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

Reasons

27. The Planning Practice 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. I shall deal with allegations of unreasonable behaviour under the headings set out on the Council's written costs application.
28. PPG² advises that "local planning authorities 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". The examples of unreasonable behaviour are similar to those set out in paragraph 3 above.

² Paragraph: 047 Reference ID: 16-047-20140306

29. Importantly any unreasonable behaviour has to have resulted in the appellant incurring unnecessary expense for an award of costs to be made. I shall consider the appellant's claims on this basis.

Need

30. Whilst the appellant argues that the Council came to the Inquiry arguing that there was no unmet need, the Council's proof of evidence on this matter says at paragraph 3.1 that "the latest evidence from the 2021 GTAA identifies a shortfall in pitches across West Berkshire".
31. As would be expected, both main parties came to the Inquiry with a different stance in terms of need. The Council did argue that they had a 5 year supply of pitches to meet PPTS need and indeed I agree with this position in my decision letter. The issue of need was made more complicated in preparing for the Inquiry since the Council was not aware of the appellant's gypsy status until the submission of proofs of evidence on 28 June 2022. With regards to this matter, I find that the Council did not behave unreasonably.

Ecology

32. The appellant contends that the ecology reason for refusal was weak. However, the Council did defend their reason for refusal and although the matter could and ultimately was resolved by a planning condition and UU this would have not been possible without the appellant's evidence on ecology and this was not submitted until 27th May and 28th June 2022. Again, I find that the Council did not act unreasonably in this regard.

Noise

33. The noise harm was dealt with by a planning condition in my decision, however it was necessary to have noise evidence from both parties in order to conclude that a noise condition could overcome the harm. As set out above this was submitted by the appellant just 3 weeks prior to the deadline for the proofs of evidence. The request for such evidence was not unreasonable given the location of the site, close to the M4 motorway. Whilst the Council did grant planning permission for a residential bus on an adjacent site seemingly without a NIA, that site is in a less elevated position.

Lighting

34. Whilst the appellant's costs application refers to lighting, this seems to be in the context of the landscape evidence. This took up very little time at the Inquiry and the appellant was not required to provide specialist technical evidence on this matter. As such I am satisfied that no unreasonable behaviour occurred in this regard.

Conclusion

35. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Louise Crosby

INSPECTOR