



Costs Decision

Inquiry Held on 10, 11 & 12 May 2022, 30 August 2022, and 1 & 2 September 2022

Site visit made on 10 May 2022 and 2 September 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2022

Costs application in relation to Appeal Ref: APP/Q3115/C/19/3288398 Land at 12 (aka Plot 12) Kiln Lane, Garsington, Oxfordshire OX44 9AR

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Arthur McDonagh for a partial award of costs against South Oxfordshire District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging failure to comply with condition No 1 of a planning permission Ref P15/S/S1878/FUL granted on 29 April 2016.
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Costs application in relation to Appeal Ref: APP/Q3115/W/20/3263366 7/8 Kiln Lane, Garsington, OX44 9AR

- 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 & Mrs Michael & Ann McDonagh for a partial award of costs against South Oxfordshire District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the material change in use of land to a travellers caravan site consisting of a mobile home, an amenity block, two touring caravans and associated works.
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Decision: the application is refused

The submissions for Mr Arthur McDonagh, and Mr & Mrs Michael & Ann McDonagh

1. The delay in making concessions in respect of the need for gypsy and traveller sites set out in the position statement dated 22 April 2022 was unreasonable. The position statement was not served until 3 May 2022, a week before the start of the Inquiry. The bundle of evidence previously submitted by Hannah Guest was extensive, and time and money was wasted in having to read and be prepared to deal with that evidence.

The response by South Oxfordshire District Council

2. The evidence of Hannah Guest dealt with need and supply only. This was a relevant matter for the Council to produce evidence on: indeed, the Council would have been remiss not to have done so. The Proof of Evidence is relatively short. There are nine appendices, the largest of which is the Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA). Dr Murdoch also produces the GTAA as an exhibit. The other appendices are each a few pages in length.

3. The Proof of Evidence produced by Hannah Guest was provided in September 2021, before the Inquiry was postponed to May 2022. The Council reviewed its position in April 2022, and a draft position statement was produced on 22 April 2022. That position statement was approved by Hannah Guest on 25 April 2022. Mr Peter, who was coordinating the Council's case, was on annual leave at the time and was not able to review the position statement until 2 May 2022. The position statement was circulated on the following day, one week before the Inquiry opened.
4. Section 1 of the position statement reproduces section 3 of Hannah Guest's Proof of Evidence. Section 2 of the position statement updates section 4 of Hannah Guest's Proof of Evidence. There was only one substantial change. In both Hannah Guest's Proof of Evidence and the position statement, the Council accepted that it could not show a five year supply.
5. In the light of that one substantial change, the Council considered that it would not be a sensible use of Inquiry time to call Hannah Guest to give evidence. The Council commented on that when circulating the position statement.
6. Far from acting unreasonably, the Council reasonably and voluntarily provided an update on the supply position before the Inquiry, as opposed to calling Hannah Guest to update the position by giving evidence in chief. Equally reasonably, doing so reduced the live evidence that the Inquiry had to consider.
7. It is not accepted that the appellants' representatives have spent time on preparing for cross examination that has been wasted. Hannah Guests' evidence has not been withdrawn. It was open to the appellants to challenge whether or not Hannah Guest gave evidence. Given that Hannah Guests' assessment of need is based on the GTAA, which Dr Murdoch produces and deals with at length in his own Proof of Evidence, it is difficult to see what wasted time there could have been. The application is entirely without merit.

Reasons

8. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include not reviewing their case promptly following the lodging of an application to remove or vary one or more conditions, as part of sensible on-going case management.
9. In relation to this claim for costs, the key words in the PPG are "as part of sensible on-going case management". The Council quite properly reviewed its position before the opening of the adjourned Inquiry. In doing so, it identified a substantial change in circumstances that affected the evidence that it intended on rely upon at the Inquiry. It did not completely withdraw that evidence. It amended that evidence by producing a position statement. It did so promptly, allowing for the availability of key staff. The production of that position statement, and thereby not calling Hannah Guest to give evidence, is likely to have saved a considerable amount of Inquiry time.

10. Far from being unreasonable behaviour, to my mind the Council's actions were an exemplar of sensible on-going case management and entirely in keeping with best practice as advocated in the PPG. In the absence of unreasonable behaviour on the part of the Council, an award of costs is not justified.

Paul Freer
INSPECTOR