



Costs Decision

Hearing held on 6 December 2022

Site visit made on 5 December 2022

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2022

Costs application in relation to Appeal Ref: APP/C2708/W/22/3292203 Dugdale Ranch, Langber End Lane, Ingleton, Carnforth LA6 3DT

- 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 Messers K and R Dugdale for a full award of costs against Craven District Council.
 - The appeal is against the refusal of planning permission for the material change of use for stationing of caravans for residential occupation with utility buildings and associated hard standing.
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Decision

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

The submissions for the applicant and response by the Council

2. The application made in writing by the applicant is for a full award of costs as it is alleged that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; also, the Council's failure to produce evidence to substantiate each reason for refusal on appeal.
3. The applicant made further oral submissions at the Hearing. These are: the application is made on the basis of substantive behaviour. I leave it to your judgement as to whether you wish to add any procedural matters given the Council's non-attendance at the site visit yesterday. With regards to the Council's rebuttal, it is not a question of arriving at different conclusions on matters of judgement, but a failure to have regard to the Planning policy for traveller sites (PPTS) and ignoring adopted Policy H3 which does require need to be updated. The Council has accepted today there is evidence of existing need for the appellants which does not appear to have been taken into consideration when planning permission was refused.
4. The Council submitted its written response ahead of the Hearing, but oral submissions were also made at the Hearing. These are: the case officer took into consideration the local plan reports and other material considerations, including the PPTS when reaching their decision based on the information available to them at that time and the Council has not acted unreasonably in coming to that decision.

Reasons

5. The Planning Practice Guidance (the 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. For an application to be successful, it needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Parties in the appeal process are normally expected to meet their own expenses.

6. In this case, it was common ground between the parties that the site is outside of the settlement of Ingleton and in the open countryside. The dispute focussed on whether the site was isolated and whether the intended occupants would be able to access facilities and services in Ingleton, a Tier 3 local service centre.
7. The Council set out its position on why it considered the appeal site to be located in an isolated position having regard to the development plan, the National Planning Policy Framework (the Framework) and case law. The Council did also acknowledge paragraph 25 of the PPTS in coming to the view that it did both in determining the planning application and on appeal. In doing so, it recognised that the PPTS does not exclude Gypsy and Traveller sites in the open countryside, but equally, there is no presumption that such development is acceptable in principle in such locations either.
8. It was accepted by the applicants that the site's location would mean that the intended occupants would rely on the private vehicle, albeit they could choose to walk or cycle to Ingleton. Although journeys would be short and Framework paragraph 105 explains that sustainable transport solutions will vary between urban and rural areas, the Council did consider and set out its case around sustainability. In doing so, I am satisfied that the Council was cognisant of the site's rural location and that of the wider area, even though I agreed with the applicants that the proposal complied with Policy H3 c) of the Craven Local Plan 2012 to 2032 (Local Plan).
9. Local Plan Policy H3 does not indicate specific locations for entirely new sites, but this policy needs to be read alongside the Council's spatial strategy found in Local Plan Policy SP4, which the applicants fairly accepted the proposal conflicts with. By extension, this brought about conflict with Local Plan Policies SP1 and INF7. I note the applicants' points about the development plan not including an exception such as those listed in Local Plan Policy H2, but the Local Plan was found to be 'sound' when it was examined. It is not for a s78 appeal to reconsider the Local Plan.
10. Both parties accepted that it was a matter of planning judgement as to whether the site was isolated or not and whether future occupants would have reasonable access to facilities and services. On both issues, the Council has exercised its planning judgement based on the development plan, the Framework, the PPTS and case law. As I pointed out in my decision, there are inherent tensions between the Council's spatial strategy, achieving a sustainable pattern of growth, limiting proposals for new homes in the countryside, new private traveller sites, the Framework and the PPTS. Whilst the applicants disagree with the Council's assessment on these matters, that does not amount to unreasonable behaviour. As such, with respect to this aspect of the application, the Council produced evidence to substantiate the first and third reasons for refusing planning permission.
11. However, in refusing planning permission, the Council determined that there was no planned need for new Gypsy Traveller pitches in the district and the proposal failed to satisfy Local Plan Policy H3. In doing so, the Council relied heavily on its Gypsies and Travellers Evidence Base (Evidence Base). The

Evidence Base was published in 2013 and then updated in 2017. It remains the Council's evidence base for determining the need for Gypsy and Traveller sites in the district. Even so, it does not reflect the situation on the ground insofar the applicants and Local Plan Policy H3 supports new private sites where there is a newly arising need subject to several criteria.

12. The applicants' Planning Statement outlined who the intended occupants were, their new households, the family background and their Gypsy and Traveller status. This document went on to outline the case for them having regard to the development plan, the Evidence Base and the situation on the ground. It clearly highlighted the newly arising need, notwithstanding the Evidence Base.
13. Despite this, the Council determined that there was no need and the proposal failed to satisfy Local Plan Policy H3. On appeal, the applicants presented similar information and sought to address the Council's points. Yet, during the Hearing, the Council accepted that the applicants' evidence did amount to an existing need. That evidence had not changed since the Planning Statement. Therefore, as the Council's new position was not brought about by new evidence, it failed to produce evidence to substantiate its second reason for refusal on appeal. However, this would not have changed the need to arrive at an overall judgement on the proposal given the first and third reasons for refusal, given the development plan conflict, even if Local Plan Policy H3 was satisfied. As such, the Council did not prevent or delay development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations.
14. In relation to the procedural aspect of the claim, given that one of the intended occupants had moved onto the site and to make best use of daylight hours due to the site's location some distance from the hearing venue, an accompanied site visit was arranged for 5 December at 3pm. Both parties were advised of this at the end of October by email. The case officer confirmed on 18 November that they would not be able to attend the site visit but confirmed that he had spoken with the Planning Manager who was arranging cover. There was no suggestion from the Council that cover had not been arranged. A reminder of the site visit was sent by email to both parties on the morning of 5 December.
15. One of the applicants attended the site visit but no one was present from the Council. It was later confirmed that no one from the Council was attending. There had been no indication from the Council that this would be the case despite the correspondence, promise of cover being arranged and a reminder. Therefore, the Council has acted unreasonably by not attending the site visit and no good reason has been forthcoming to explain why neither the appellant or the case officer were contacted prior to the visit taking place. This caused wasted expense for the applicants as they were professionally represented at the site visit and their journey was not needed.
16. In conclusion, the outcome of the case in terms of the site's location was not so clear that I agree with the applicants that the Council failed to allow development that should clearly be permitted; and that it failed to produce evidence to substantiate each reason for refusal on appeal. Thus, the application for a full award of costs fails as the Council has not behaved unreasonably and caused the applicant to incur unnecessary or wasted expense in appealing that decision. However, the applicants have incurred unnecessary and wasted expense in the appeal process due to the Council's unreasonable behaviour relating to the second reason for refusal and the site visit.

Conclusion

17. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated. As a result, a partial award of costs is warranted in this case.

Costs Order

18. 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 the Craven District Council shall pay to Messers K and R Dugdale, the partial costs of the appeal proceedings limited to those incurred in relation to the second reason for refusing planning permission and the site visit; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Craven 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.

Andrew McGlone

INSPECTOR