



Costs Decision

Hearing held on 7 February 2023

Site visit made on 7 February 2023

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2023

Costs application in relation to Appeal Ref: APP/M1595/W/20/3255502 Manor View, Southend Road, Corringham SS17 9EY

- 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 R Ward for a full award of costs against Thurrock Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the use of land for a four pitch gypsy/traveller site with layout comprising the siting of six mobile homes, two touring caravans, one day room and a static caravan used as a day room.
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Decision

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

The submissions for Mr R Ward

2. The Council did not consider issuing a temporary planning permission, and if it had, it would have been granted and the appeal would not have been needed. The Committee Report details that *"the Inspector previously afforded the matter of unmet need significant weight, however this was for a temporary permission. The present application is for a permanent permission and this is a very different consideration."* This was wrong and the Council have a duty to consider issuing a temporary planning permission, as it would have made the unacceptable development acceptable by use of a planning condition. It was unreasonable behaviour not to consider this and there are unnecessary expenses from having to appeal the decision of the Council.
3. The Council have not properly considered the criteria in Policy CSTP3 of the Thurrock Core Strategy and Policies for Management of Development (January 2015) (the CS). Had the Council asked about a temporary consent, we would have accepted this. Nothing has changed since the last Appeal Decision¹, apart from more weighting in favour of our case. It is inexcusable not to consider a temporary permission and there is an overwhelming case for costs.

The response by Thurrock Borough Council

4. The planning application as submitted did not mention a temporary consent. Therefore, the Council thought the applicant was only looking for a permanent consent. There was no correspondence about a temporary consent between the case officer and the applicant.

¹ APP/M1595/A/14/2217368

5. There is also no guarantee that a temporary permission would have been granted by the Council, or that the applicant would not have appealed the temporary condition. Additionally, given the time that has passed since the appeal was lodged², the applicant could have applied for temporary consent if he wished to.
6. In relation to Policy CSTP3 of the CS. It is correct that the policy was used as a reason for refusal in the 2014 planning decision. However, the reasons at that time related to the details such as site access and sustainability. In the appeal decision, the Inspector did not find any conflict, so Policy CSTP3 was not used as a reason for refusal in this appeal. The Green Belt Policies CSSP4 and PMD6 were used as these are overarching, covering all forms of development in the Green Belt.

Final response by the applicant

7. The explanation from the Council is unjustified and unreasonable. The Council should have considered if a temporary permission would be acceptable, particularly considering the infringement of Human Rights and Public Sector Equality Duty. The consequences (i.e. the site becoming unauthorised) of not granting permanent permission could have been remedied by a temporary consent, and not considering a temporary permission does not make sense.
8. The Council are obliged to consider Policy CSTP3, not on the basis as it could be a reason for refusal, but as a reason to grant permission. Had it properly considered this, it would have reminded itself that the test of harm was higher than it applied, and that would have been another reason for it to review its decision. The Council would have come to conclusion that there was compliance with CSTP3. This would have been a reason for permanent or temporary permission.
9. It is important to remember that this is an application for 4 families who has lived on site for 10 years, with 13 children under 18. It is unforgivable not to consider temporary consent and if the application had been properly considered, there would not have been an appeal and costs would have been saved. There is justification for a full costs order.

Reasons

10. 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. Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. For example, refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.

Unreasonable behaviour

11. Human Rights and the Public Sector Equality Duty (PSED) were engaged in this application and refusal of planning permission was an interference with those

² Appeal Form dated 6 July 2020

rights. Just because the applicant did not ask for temporary permission does not mean that the Council did not have a duty to consider it. A temporary permission would have caused less harm than a permanent permission, and avoided such an interference of Human Rights and PSED.

12. In this case, it is clear that a temporary planning permission would have provided more time for the emerging Local Plan to consider and allocate sites for Gypsies and Travellers, in recognition of the sheer scale of need in the borough and the failure to do anything to remedy the situation since the last appeal. It would have enabled this site to continue to operate for another 5 years, accommodating 4 families in real need of accommodation.
13. Accordingly, the failure of the Council to consider imposing a suitable condition for a temporary planning permission is unreasonable behaviour.
14. Furthermore, the Council should have reviewed the proposal's compliance with Policy CSTP3, given this is the Council's Gypsy and Traveller policy. However, this is of little consequence to the costs claim because compliance with Policy CSTP3 would not have overridden the Green Belt harm and the need to consider very special circumstances.

Unnecessary or wasted costs

15. I accept that there is no guarantee that the applicant would not have appealed the temporary planning condition, particularly given the need for stability and certainty. However, the applicant strongly asserts that had he received a temporary planning permission, this would have been satisfactory and the appeal would have been avoided. I am inclined to agree that this is likely, because a temporary permission would have provided stability for another 5 years, enabling the Council time to allocate sites through the emerging Local Plan.
16. The Council also assert that the applicant could have applied for temporary planning permission after the refusal of planning permission. However, the applicant would have been put to additional expense by applying for another permission in the interim, instead of awaiting the outcome of this appeal.
17. Therefore, the Council's unreasonable behaviour caused the applicant to incur unnecessary or wasted expense in the appeal process.

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 Thurrock Borough Council shall pay to Mr R Ward, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Thurrock Borough Council details of those costs with a view to reaching agreement as to the amount.

Katie McDonald

INSPECTOR