



Costs Decision

Inquiry held on 1 – 2 and 21 November 2022

Site visit made on 3 November 2022

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Costs application in relation to Appeal Ref: APP/Y3425/W/3119166 Land to the northeast side of Hilderstone Road, Spot Acre ST15 8RP

- 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 George Clee for a partial award of costs against Stafford Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the removal of conditions 1 and 2 of planning permission reference APP/Y3425/W/15/3119166 granted on appeal (15th November 2016) to facilitate the change of use for the stationing of caravans for five gypsy pitches, with utility/day rooms, access road and areas of hardstanding ancillary to that use.
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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 George Clee

2. The Council raised three matters for the first time in the proof of evidence. These had not been referenced in the reason for refusal, as they were required to be, nor in the Council's Statement of Case. The unreasonable introduction of this material at such a late stage required the production of a rebuttal statement to ensure that the appellant's case was fully before the Inquiry. The cost of the production of this rebuttal evidence was unnecessary.
3. The first new matter was the allegation of harm to the character and appearance of the countryside. The Council's Statement of Case expressly dealt with openness in the context of the Green Belt. It did not address the impact on the character and appearance of the countryside.
4. The Council's statement in an email in August 2022 that the impact on character and appearance could be given "neutral weight" is not relevant. The Council did not withdraw the evidence.
5. The second new matter was the site's alleged isolated location in the open countryside. Again, this was not mentioned until the proof of evidence, and the fact that a previous Inspector had dealt with the matter did not imply that it was part of the Council's case to be considered at the Inquiry.
6. The third matter was the allegation of intentional unauthorised development. As before, this was not raised until the proof of evidence and the fact that the Council subsequently did not pursue the matter is not relevant. As with the

other matters, it was an unexpected complaint against the appeal which the appellant had to deal with.

The response by Stafford Borough Council

7. In relation to the effect on the character and appearance of the countryside, the Council's Statement of Case referred to the effect of development on the visual qualities of the land. The effect of the scheme on the appearance and character of the site and the surrounding area of the Green Belt is synonymous with the effect on its visual qualities.
8. In any event the Council's witness, following the final Case Management Conference, confirmed that the issue of character and appearance should be attributed "neutral weight". That could only sensibly be interpreted as meaning that it was not relied on as a reason for refusal.
9. The site's isolated location in open countryside was a matter dealt with by a previous Inspector, and it was clear that this would also be an issue in this appeal.
10. Intentional unauthorised development and the related Written Ministerial Statement was capable of being a material consideration at the start of the Inquiry. The status of the site's occupants was far from clear until almost the close of the Inquiry. When this became clear the Council stated that it would not submit that this matter was material to the decision.

Reasons

11. 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.
12. The claim for partial costs relates solely to the appellant's rebuttal evidence which, it is alleged, was necessitated by the Council's evidence going beyond the reasons for refusal and the Statement of Case. Before turning to the specific areas of complaint, I will deal with the principle.
13. As a matter of law and procedural fairness, it is important that the parties to an appeal should know the case they have to face. The days of surprise evidence being produced at a late stage have long gone. Although inevitably the evidence becomes more detailed after the Council's reasons for refusal, up to and including the Inquiry itself, the principle of the issues should be clear from a very early stage.
14. In particular it is a requirement that where planning permission is refused, the refusal notice should state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development plan that are relevant to the decision. If that is not done, and the position of the authority departs from the reasons for refusal, that could well be unreasonable behaviour.
15. I will now turn to the particular complaints raised by the appellant.
16. Firstly the impact on the character and appearance of the countryside was not raised as a reason for refusal. The Council's position was confusing on this matter. In the Council's planning proof it was stated that a number of matters

were “..pertinent to this appeal..”. These matters included character and appearance, and seven relatively lengthy paragraphs were devoted to that topic, with the conclusion that modest weight should be given to that harm. The Council suggested that it flowed from the reason for refusal. But it did not do so as the effect on character and appearance is not the same as Green Belt issues (which were raised in the reason for refusal).

17. The reference by the authority to the Council’s Statement of Case is disingenuous as paragraph 22 of that document is clearly referring to the Green Belt and not the effect on character and appearance.
18. In an email in August 2022 the Council stated that this matter should be given “..neutral weight..”. However the relevant parts of the evidence were not withdrawn and remained before me for consideration.
19. Secondly the site’s isolated location in the open countryside. Again, this was not mentioned in the reason for refusal of elsewhere, but was included in the proof of evidence. This took the form of three relatively substantial paragraphs, concluding that there was a conflict with the development plan and stating that this harm should be given significant weight.
20. Finally the matter of intentional unauthorised development (referring to the Written Ministerial Statement). Again, there was no reference in the reason for refusal or subsequently but was a matter raised in the proof of evidence. Six paragraphs in the proof concluded with the this should be given significant weight. The Council at the Inquiry did not pursue this matter.
21. All three matters were raised by the Council at a very late stage, all went well beyond the reason for refusal and the Statement of Case. The fact that they were pursued to a limited and variable extent at the Inquiry is not relevant as the claim for costs relates to the clear need for the appellant to produce rebuttal evidence to address this new material. The emergence of these issues at a late stage was clearly unreasonable and put the appellant to the unnecessary expense of producing evidence in response.
22. I therefore 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

23. 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 Stafford Borough Council shall pay to Mr George Clee, the costs of the appeal proceedings described in the heading of this decision, related solely to the production of the appellant’s rebuttal evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. The applicant is now invited to submit to Stafford Borough Council details of those costs with a view to reaching agreement as to the amount.

P. J. G. Ware
Inspector