The Planning Inspectorate

Costs Decision

Hearing held on 22 November 2022

Site visit made on 22 November 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Costs application in relation to Appeal Ref: APP/C3105/W/21/3272481
Land south of Widnell Lane, Arncott, Bicester, Oxfordshire OX25 1AE

- 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 Cherwell District Council for a full award of costs against Mr Patrick Foster.
- The appeal was against the refusal of planning permission for a material change of use of land to use as a residential caravan site for 12 gypsy/traveller families, each with 2 caravans, including improvement of access, laying of hardstanding and the installation of package sewage treatment plant.

Decision

1. The application for a full award of costs is refused.

Preliminary Matter

2. The Council refused the application for 3no. reasons relating to the effect of the proposal on character and appearance, protected species and flood risk. However, character and appearance has not been included within this application for costs. I have dealt with the application on this basis.

The submissions for Cherwell District Council

3. The costs application was made in writing prior to the Hearing. The Council considers that in preparing a Statement of Common Ground (SoCG) additional time and resources were required, and to an overall lack of cooperation by the appellant in this regard. With regard to ecology, the Council further asserts that there is a reliance by the appellant on out of date surveys, a lack of consideration towards an appeal decision[1] and a failure to undertake further survey work prior to the Hearing. A lack of supporting evidence has also been cited by the Council in respect of flooding and drainage. As such, the Council considers the appellant to have not proactively engaged in the preparation of the SoCG and the evidence submitted is such that it is contrary to national and established planning policy.

The response for Mr Patrick Foster

4. The appellant responded verbally to the Council's grounds for an award of costs at the Hearing. The appellant advised that he submitted a draft SoCG with his submission over a year ago and has received no response from the Council. With regard to ecology, the appellant stated that the survey work is up to them

[1] APP/C3105/W/20/3262394

and the evidence on which they rely upon is also up to them. With regard to flood risk, the appellant stated, providing additional information is up to them and that the Council has failed to have regard to the previous planning application[2] that has already been granted. Additionally, the Council has recently ignored a very recent appeal decision where the Inspector considered that surface water drainage could be dealt with by condition.

Reasons

5. 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. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.

6. An award of costs against an appellant may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. An appellant is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include, but are not limited to: not completing a timely statement of common ground or not agreeing factual matters common to witnesses of both principal parties[3] and the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence[4].

7. Whilst the Council cites a lack of cooperation with regard to the SoCG, it is accepted that the appellant submitted a draft SoCG with its appeal. Although, the comments at the event from the Council that it never received a copy of the draft SoCG is noted. In letters dated 8 October 2021, both main parties were notified of a deadline of 12 November 2021 for an agreed SoCG to be submitted. However, I accept that it is highly likely that, given the delay in starting the appeal and appointing an Inspector did not assist in ensuring compliance with this deadline. Nonetheless, both parties had a responsibility in the submission of a SoCG.

8. The Council has questioned the evidence supplied by the appellant in support of protected species and flood risk, and to a lack of evidence, with particular regard to the latter issue. I have noted deficiencies in these areas too, which can be seen from my decision. However, there are circumstances surrounding this appeal in the form of other appeal decisions on the site and on an adjacent site, where similar information to that supplied at this appeal was accepted and conditions were imposed. I am not convinced the previous Inspectors had the benefit of the evidence that was presented to me at this appeal. Thus, I was not satisfied that otherwise unacceptable development could be made acceptable in this instance, through the imposition of suitably worded conditions.

[2] APP/C3105/W/18/3209349
[3] PPG Paragraph: 052 Reference ID: 16-052-20140306 - Revision date: 06 03 2014
[4] PPG Paragraph: 053 Reference ID: 16-053-20140306 - Revision date: 06 03 2014

9. I find that the decision on the planning application was a matter of judgement and in this instance, the appellant was entitled to dispute the decision of the Council to refuse planning permission, particularly with regard to character and appearance. Despite the misgivings surrounding the supporting evidence, the appellant has provided evidence in support of his submission, although not substantial, it does set out the reasoning why they consider there would be no harm with regard to protected species or flood risk. Whilst, the Council does not agree with the appellant's case, that does not mean the appellant has behaved unreasonably in submitting the appeal. In any event, an appeal was highly likely in respect of character and appearance.

10. Parties in planning appeals and other planning proceedings normally meet their own expenses. I acknowledge that the Council has incurred costs, but in this particular case, I am satisfied that the appellant did not submit an unnecessary appeal that could otherwise have been avoided. I consider the expenses incurred in making the arrangements for and attending the Hearing were reasonably expected and necessary. Consequently, I find no procedural nor substantive grounds for an award of costs. I therefore find that unreasonable behaviour by the appellant, resulting in unnecessary or wasted expense as described in the PPG, has not been demonstrated.

Conclusion

11. For the reasons given above, I conclude that a full award of costs is not justified.

W Johnson

INSPECTOR