



Costs Decision

Inquiry held on 8 March 2022, 14 and 20 June 2022, 30 and 31 January 2023, 1 and 2 February 2023, 1 March 2023 and 24 April 2023

Site visits made on 28 February 2022 and 6 February 2023

by Peter Rose BA MRTPI DMS MCMi

an Inspector appointed by the Secretary of State

Decision date: 1st June 2023

Costs application in relation to Appeal Ref: APP/J1915/W/20/3262192 Land at Millfield Lane, Bury Green, Little Hadham SG11 2ED

- 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 J Connors for a partial award of costs against East Herts Council.
 - The Inquiry was in connection with a refusal of planning permission for creation of a four pitch Gypsy/Traveller site comprising the siting of one mobile home, one touring caravan, and the erection of one dayroom on each pitch, and the formation of an internal track and hardstandings.
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Decision

1. The application for a partial awards of costs is refused.

The submissions for Mr Connors

2. On 20 June 2022, the Inquiry was presented with a note setting out a material change in the Council's case regarding the lawful status of the site. This was inconsistent with previous understanding, necessitated preparation of further and revised evidence, and incurred the appellant significant expense.

The response by the Council

3. The Council's note was in response to the Inspector's request. The note was not in itself unreasonable and was a normal part of the appeal process.

Reasons

4. 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.¹
5. The Guidance identifies possible unreasonable behaviour by an authority to include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen, and prolonging the proceedings by introducing a new

¹ Paragraph: 028 Reference ID: 16-028-20140306

reason for refusal.² It further advises that all parties are expected to behave reasonably to support an efficient and timely process.³

6. From the outset of this appeal, I had been concerned to understand the existing planning status of the site as a comparison to the proposals under consideration. At the first Case Management Conference (CMC) held on 10 January 2022, and in response to this concern, both parties undertook to look again at the description of the appeal proposal as per page 1 of the Council's decision notice and were invited to confirm an agreed position in writing. At a further CMC held on 24 May, the appellant and Council were again requested to confirm whether an agreed position statement could be offered as to the planning status of the existing structure/works on the site or, if not, identification of what any areas of difference between the parties may be. A further written reminder was issued to the parties on 1 June, and this matter was also raised at the Inquiry itself.
7. A note was then sent from the Council by email of 17 June prior to resumption on 20 June. Its stated purpose was to clarify the Council's position on the existing (or fallback) lawful use of the appeal site. It asserted that 'the lawful position on the site is not PDL or any other form of development. The lawful status of the site is that of a greenfield agricultural site'.
8. Until receipt of the note, I had no sense from the Council that it considered the site to have no beneficial permission. To that extent, I agree with the appellant and accept the Council had presented a new position and which was relevant to his case and to the evidence he may wish to present. Although my enquiry was essentially around lawfulness, the Council's note also went further to address the related issue of previously developed land.
9. If I were to accept the note, the appellant submitted he was entitled to an adjournment to prepare evidence in response. Lawfulness was presented as being central to the appeal, and particularly to matters of character and appearance, and I needed the evidence before the Inquiry to be both accurate and comprehensive. The note was in response to my requests, and I had no doubt of its importance and in admitting it to the Inquiry.
10. Throughout the Inquiry the appellant was at pains to maintain his right to be heard and to examine evidence in person rather than through written form or in combination.
11. The appellant's request to adjourn was not supported by the Council. I agree it might have been possible, with the will and co-operation of both parties, to still progress without adjournment and to supplement the existing evidence subsequently in written form and according to a joint programme, but that appeared to offer little prospect of an agreed way forward.
12. Even so, I found the appellant's request to be reasonable and adjourned to ensure the appellant, in common with all parties, could be satisfied of a full and fair hearing. It does not necessarily follow, however, that by acceding to the appellant's request to adjourn on 20 June and to be heard, that his costs incurred by that request should be borne by others.

² Paragraph: 047 Reference ID: 16-047-20140306

³ Paragraph: 028 Reference ID: 16-028-20140306

13. The Council's stated position was a consequence of my continuing reference to the need for clarification from both parties of what had been a live but unresolved issue since the first CMC, and was also part of the evolving nature of the Inquiry. Until receipt of the Council's note, and notwithstanding my continual references to the need for clarification, I had received no response to my previous request for an agreed position in writing.
14. On balance, whilst agreeing to the appellant's request to adjourn, I do not consider that to have been a consequence of unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense. Rather, it had been the responsibility of both parties to progress matters, and not just the Council, and both parties were aware of this and had had a more than adequate opportunity to formalise matters before 20 June. If there had been a joint outcome of clarification as previously and repeatedly requested, the circumstances of 20 June would not have arisen.

Conclusion

15. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense incurred by the appellant, as indicated in the Guidance, has not been demonstrated. Accordingly, I conclude that a partial award of costs is not justified in this instance.

Peter Rose
INSPECTOR