



## Costs Decision

Site visit made on 17 May 2023

**by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 August 2023**

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### **Costs application in relation to Appeal Ref: APP/Z3825/W/20/3246486 Parsons Field Stables, Pickhurst Lane, Pulborough RH20 1DA**

- 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 F Keet for a full award of costs against Horsham District Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of land to caravan site for stationing of up to three caravans for occupation by gypsy-traveller family with associated development (timber utility shed, utility trailer, septic tank, hard standing and additional landscaping).
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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 F Keet**

2. The costs application was made in writing prior to the Hearing, with additional comments submitted verbally at the event. This case is made in relation to substantive behaviour which includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, and failure to produce evidence to substantiate each reason for refusal on appeal. In refusing permission contrary to the Chief Planning Officer's recommendation to grant permission on a permanent basis, Members have failed to determine similar cases in a consistent manner and have relied on vague and generalised assertions about the proposal's impact which are unsupported by objective analysis.
3. The Council fail to justify why they consider this an unsustainable location when they have been willing to grant approval for a greater number of pitches (8 in total) on another site, 200m away on Black Gate Lane. The Council fail to justify how this small site would cause significant harm to the landscape character of the area contrary to the views expressed by an experienced case officer in the committee report. In refusing permission the Council stated that a temporary permission was no longer justified due to the absence of the applicant's education needs now being material to the application. However, in making this sweeping statement they have ignored the personal information submitted with the application, the fact there are now more children living on the site and in education, and the fact the previous appeal decision<sup>1</sup> granted temporary consent without reliance on personal circumstances or reliance on a personal condition.

### **The response for Horsham District Council**

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<sup>1</sup> APP/Z3825/A/14/2218650

4. The Council responded in writing prior to the Hearing and declined an opportunity to verbally respond to the applicant's additional comments at the Hearing. The Council advises that its written statement of case explicitly considers the sustainability of the application site. Within the Council's statement it is recognised that the appeal site is not distant from Codmore Hill, as the crow flies, though, that the condition and convenience of available routes is likely to demand a significant reliance on the use of a private vehicle, such as to render the site unsustainable with regard to facilities and services expected to support the development.
5. The Council's written statement of case considers the landscape harm arising from the appeal scheme, and specifically address' components of the use leading to harm in relation to relevant development plan policies. The Council's objections in these respects, therefore, are deemed clear and are material to the acceptability of the development. The possibility of including conditions to achieve improvements to existing landscaping was debated by Members at the committee meeting, though, it was not considered that such a condition could acceptably redress landscape harm arising from the use of land and in light of the "considerable" landscape harm identified by an Inspector on the previous appeal decision. In respect of educational need it is accepted that the reason for refusal incorrectly refers to the absence of an educational need on the published decision notice.

## **Reasons**

6. 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.
7. The PPG states<sup>2</sup> that 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. Examples include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and not determining similar cases in a consistent manner.
8. The Council refused the application for reasons relating to the location of the site, the effect of the development on character and appearance, with reference to an absence of educational needs. The Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
9. With the exception of the reference to 'educational needs', the Council's refusal

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<sup>2</sup> Paragraph 049 Reference ID: 16-049-20140306

reason on its decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan which it would be in conflict with. Additionally, an appeal statement has been submitted to support the reason for refusal. I accept that in both the location of the site and character and appearance a degree of judgment is required. Nonetheless, the Council submitted an appeal decision<sup>3</sup> in support of its case regarding character and appearance for a development on Harbolets Road, West Chiltington, but do not appear to acknowledge the comments with regards to its location. Additionally, I am not satisfied at the explanation provided by the Council surrounding the approval of a similar development on Black Gate Lane, when the appeal site is in proximity of this approved scheme.

10. Whilst I reached a different conclusion to the Council, I am satisfied that the Council did not prevent and delay development which should have clearly been permitted, having regard to its accordance with the development plan, as I consider that an appeal was inevitable regarding issues surrounding character and appearance, due to the subjectivity of the issue.
11. However, I note that the PPG lists not determining similar cases in a consistent manner<sup>4</sup> may give rise to a substantive award against a local planning authority. In this instance, there is a lack of consistency in the determination of planning applications and an introduction of a new matter that was not raised on the previous application<sup>5</sup> or appeal. These are significant errors. Furthermore, the incorrect reference to the absence of an 'educational need' on the Council's decision notice and a failure to properly address issues surrounding the best interest of the child is a serious oversight in the determination of the application.

## **Conclusion**

12. For the reasons given above, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

## **Costs Order**

13. 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 Horsham District Council shall pay to Mr F Keet, the costs of the appeal proceedings described in the heading of this decision, incurred in arguing against the Council's view regarding the location of the site and the best interests of the child, such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Horsham 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.

*W Johnson*

INSPECTOR

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<sup>3</sup> APP/Z3825/W/19/3242284

<sup>4</sup> 048 Reference ID: 16-048-20140306

<sup>5</sup> DC/16/2388