



Costs Decision

Hearing held on 20 July 2023

Site visit made on 20 July 2023

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 04 September 2023

Costs application in relation to Appeal A Ref: APP/Q3305/C/22/3292439 and Appeal B Ref APP/Q3305/W/23/3318919

Westside, Honeyhurst Lane, Rodney Stoke, BS27 3UJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Ms Elizabeth Smith for a full award of costs against Mendip District Council.
- The appeals were against an enforcement notice (Appeal A) alleging failure to comply with condition No 4 imposed on a planning permission for "Extension to existing dayroom to form bungalow" (Council ref 112284/005) which precluded the siting of a mobile home or residential caravan on the land, and against the refusal of planning permission (Appeal B) for that development without complying with condition No 4 which restricts occupancy to Gypsies and their families.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. Both appeals were considered at the same hearing. Underlying the applications is that neither appeal should have been necessary, but it is accepted by the appellant that if unreasonable behaviour by the Council is not demonstrated in both cases then the hearing would have been necessary in any event.

Appeal A

4. First, it is asserted by the appellant that the Council's investigation of its own planning records was inadequate, such that if it had properly understood, for example, the limited extent of the application site for the planning permission enforced against then the notice would not have been served in the form that it was, that is against a failure to comply with a condition. However, I have found that the breach of planning control did occur, and while ultimately I amended the allegation to one of material change of use, it was reasonable of the Council to enforce against failure to comply with a condition on an existing permission.
5. In respect of the deemed planning application, it is claimed that the development would clearly have been permitted if sufficient regard had been had to its accordance with the development plan, national policy and any other

material considerations, including the Traveller status of the appellant and his personal circumstances. While I found overall accordance with the development plan, there was conflict with some policies, such that the overall position was a matter of planning judgement. The Council's position was supported to an extent by previous appeal decisions, and was not unreasonable in the circumstances. While the Council was unable to fully understand the status and personal circumstances of the occupiers of the mobile home when the notice was issued, it made reasonable attempts to establish the facts, which ultimately did not become sufficiently clear until the hearing. Indeed the relevant considerations appear to me to have evolved over the course of the appeal and the Council was prepared to adapt its position accordingly. The Council's reasons for issuing the notice were also claimed to be vague, generalised and unsupported by evidence, but I found the reasons sufficiently clear and they were adequately supported.

Appeal B

6. In respect of Appeal B, which concerned the removal of a Gypsy/Traveller occupancy restriction on the bungalow, the appellant claims that the Council unreasonably applied policies directed at new buildings in the countryside and also incorrectly took the view that it was a Gypsy/Traveller site. However, to be fair to the Council those were the views of the Inspector who granted permission for the bungalow in the first place, so I do not consider its position unreasonable. Typically such conditions are only removed where they no longer serve a purpose, whereas the essence of the appellant's case was that the bungalow simply could not be considered as a Gypsy/Traveller site, notwithstanding that it had in fact functioned as a Gypsy/Traveller site for some years, albeit in very specific circumstances. I found that the condition did no longer served a useful purpose, but I do not consider that it was unreasonable of the Council to decline to grant planning permission for, in effect, an unrestricted dwelling in the countryside, given the planning history of the site and the reasons for imposing it in the first place.
7. Across both appeals I find that unreasonable behaviour causing unnecessary or wasted expense has not been demonstrated, so an award of cost is not justified.

Paul Dignan

INSPECTOR