



Costs Decision

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th September 2023

Costs application in relation to Appeal Ref APP/R2520/W/22/3300490 and linked appeals

Land off A17 adjacent to the River Witham, Sleaford Road, Beckingham, Lincolnshire LN5 0RQ

- 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 North Kesteven Council for a partial award of costs against the Appellant Group.
- The inquiry was in connection with appeals against the Council's refusals of planning permission for Change of use to residential to accommodate 1 static caravan, 1 touring caravan (parking), brick and tile dayroom, parking for two vehicles and associated service roads.
- The costs application by the Council and the response by the Appellant Group were made in writing. The Council's final response was made orally at the inquiry.

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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. However, it is not essential for this to be specified in the application itself if it is obvious from the application and evidence provided there would have been a direct consequence in terms of expense arising from the unreasonable behaviour.
4. The applicant's submissions centred on a lack of cooperation, delay in providing information or other failure to adhere to deadlines and not completing a statement of common ground in a timely manner. The following paragraphs address the examples of alleged unreasonable behaviour relied on by the applicant.
5. The description of the proposed development was a minor point of clarification that was dealt with quickly at the inquiry.
6. The hearing arranged for 29 November 2022 was not postponed solely because of the lack of professional representation on behalf of the appellant group. The Inspector's Pre-Hearing Note 2 dated 25 November set out a number of matters that contributed to the decision, including the mode of procedure.

7. The respondent's request for a short extension of time to submit proofs was not objected to by the Council at the time (email dated 2 June 2023) and I agreed to the request.
8. The highways technical note, submitted as an appendix to the planning proof of evidence, dealt with visibility and access width at the site access. To comply with procedural guidance this information should have been submitted much earlier as part of the case for the appellants. This technical information clarified and resolved outstanding highway safety issues and saved inquiry time. However, I return to this matter later.
9. The respondent relied on the use of planning conditions to deliver the required infrastructure for the individual plots, including means of drainage. This approach was not unreasonable. The planning merits of doing so are considered in the appeal decisions.
10. The applicant took issue with the respondent's attack on both need and supply of traveller sites and did not, as stated in the response, confine the point to supply. A new local plan, the Central Lincolnshire Local Plan, was adopted on 23 April 2023 (the CLLP), following examination hearings held between 15 November 2022 and 16 December 2022 and an Inspectors' report dated 28 March 2023. The respondent stated at the inquiry the proper question to ask concerned the adequacy of the evidence base and the scrutiny of the Gypsy and Traveller Accommodation Assessment 2021 (GTAA) at examination. This approach was apparent in the case presented and was also reflected in the response to the Costs application. In my Decisions I conclude that the GTAA was a robust evidence base to establish accommodation needs to inform the preparation of the CLLP. I also conclude the serious accusation that the Inspectors did not carry out examination of the evidence base with due diligence and without the necessary scrutiny is without foundation and is not a matter to be pursued through the current appeals. To present a case in the manner described on matters which Inspectors had examined and concluded on within the last three months or so was unreasonable.
11. The landscape strategy was intended to be illustrative and with that in mind the alleged incompatibility with the site layout plans was not unreasonable. The failure to serve notice on the highway authority is not a matter for the costs application, rather it is a validation issue. No injustice was claimed by the County Council as highway authority, a consultee on the planning applications and the appeals.
12. A transport statement may have been helpful but such a statement is typically required for developments of 50 - 80 dwellings, considerably more than the total number of pitches applied for. There were no unusual or particularly contentious factors that would necessitate a transport statement. The failure to provide one was not unreasonable.
13. In the Planning Practice Guidance examples of unreasonable behaviour which may result in an award of costs include not completing a timely statement of common ground or not agreeing factual matters common to witnesses of both principal parties. Written representations was selected as the preferred procedure when making the appeals and therefore the appellant did not have to submit a draft statement of common ground with the appeals. The start letter dated 13 October 2022 confirmed the appeals would be determined by way of a hearing. It was for the local planning authority to submit a completed

and agreed statement of common ground by 17 November 2022. This was done.

14. Following the change of procedure, at the Case Management Conference it was agreed the statement of common ground would require updating and the Council would take the lead in updating the policy section. Email correspondence suggested that the respondent's planning consultant cooperated in producing the statement. No unreasonable behaviour has been demonstrated.
15. The applicant also drew attention to the period leading up to the postponed hearing in November 2022 and the Inspector's Pre-Hearing Note 2¹ to demonstrate a lack of cooperation on the respondent's behalf and a failure to comply with appeal procedures. The Pre-Hearing Note referred to new areas of disagreement being raised in the appellants' cases and the appellants' failure to set out their case on highways and landscape/visual matters. This failure was despite the clear guidance from the Planning Inspectorate that the full statement of case should have been submitted when the appeal was made, a point reiterated in the start letter dated 13 October 2022². Unreasonable behaviour occurred.
16. In summary, unreasonable behaviour is demonstrated in respect of the respondent's case on need and supply of traveller sites and the failure of the respondent to set out full particulars of their case in accordance with appeal procedures.
17. I now turn to whether unnecessary or wasted expense was incurred. The costs application does not explain this matter in any detail. The Council would have produced evidence to substantiate each reason for refusal in any event, including their objections on highways, landscape and visual matters. Areas of expense incurred over and above this to reply to the respondent's case have not been explained. As for the issue of need and supply, the scope of unnecessary expense that may have been incurred is not obvious.

Conclusion

18. Unreasonable behaviour has been demonstrated but the applicant has not demonstrated how this unreasonable behaviour has resulted in unnecessary or wasted expense.

Diane Lewis

INSPECTOR

¹ I was not the appointed Inspector at that time.

² Extract from the start letter: "If you have not already sent copies of your appeal form, **full** statement of case, draft statement of common ground and other relevant documents to the local planning authority (LPA), please do so immediately."