



Costs Decision

Hearing held on 25 April 2023 and 6 September 2023

Site visit made on 24 and 25 April 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2023

Costs application in relation to Appeal Ref: APP/Y3940/W/22/3312704 Land at Grittenham, Chippenham, SN15 4JY

- 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 Bowers for a partial award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for the change of use of land to private Gypsy site and 2 no stables.
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Decision

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

The submissions for Mr Bowers

2. The costs application was submitted in writing. The application is made on a partial basis. In summary, the Council has not determined similar schemes in a consistent way. It has introduced a new reason for refusal in respect of noise.

The response by Wiltshire Council

3. The response was made in writing. In summary, there are differences between the approved scheme and this one. Other schemes near the site have been refused due to the remoteness of the location. The applicant has not evidenced how they have incurred unnecessary or wasted expense. The applicant chose to amend the scheme at appeal which gave rise to other concerns, not raised at the time the application was determined. The applicant was made aware of these concerns by the Council.

Reasons

4. 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.
5. The PPG sets out that a local planning authority is at risk of an award of costs on substantive grounds where it does not determine similar cases in a consistent manner; and on procedural grounds where it prolongs the proceedings by introducing a new reason for refusal. I consider these are relevant to the application before me.
6. With regard to the sustainability reason, the applicant asserts that it should have been considered in the same way as the Old Farm decision, where the sustainability of the location was not found to be a reason to refuse the

scheme. The Council, in its rebuttal, has set out a range of differences between the schemes to justify its position, including differences in its effect on character and appearance and the personal circumstances of the applicant in that case. However, I shall focus on matters in respect of the location of the scheme in relation to services and facilities and sustainable transport as the reason for refusal was based around that.

7. The Council has assessed this case on its own planning merits and concluded that the proposed development would not be in a sustainable location due to its distance from services and facilities, reliance on the private car and the number of pitches proposed.
8. I have not been provided with a copy of the officer report in respect of the Old Farm site and I am reliant on what I have been told about this application by the parties. I have, however, been provided with decisions in respect of the other proposals the Council has referred me to in support of its costs rebuttal.
9. It is evident that different conclusions can be reached depending upon the circumstances of the case and this is a matter of planning judgment. There are differences between the Old Farm scheme and the appeal scheme including the number of pitches being provided. In this context, it was not unreasonable for the Council to have reached the conclusion it did, although I disagreed with that conclusion. I do not therefore find the Council has been inconsistent in its decision making and I find that unreasonable behaviour on substantive grounds has not been demonstrated by the Council.
10. In my decision, I have considered the effect of noise on the living conditions of future occupants. This was not a reason for refusal. The Council raised its concern in relation to these matters in response to the amended scheme. This changed the layout of the site and confirmed the height and position of the acoustic fence. This was not supported by technical information to confirm the acoustic mitigation would be effective with a fence of that height. On the first day of the Hearing, the Council raised a concern that the fence would probably need to be higher than that proposed which would have implications for the character and appearance of the area. Discussions around this were inconclusive as to what height the fence should be.
11. In response to this, the applicant undertook a noise assessment which concluded that the 1.8m high fence, as proposed in the amended scheme, would be adequate to provide noise mitigation. The Council did not agree with the findings of the report, concluding a higher fence would be needed. It will be seen from my decision that I have agreed with the Council.
12. The original scheme on which the Council made its decision, provided a continuous acoustic fence with no height specified. Whilst the PPO raised no objection to that scheme, subject to the imposition of suitably worded conditions to secure appropriate mitigation of any harm, this was based on knowledge drawn from the Old Farm scheme where it was established that noise mitigation could be provided through a 2.5m high acoustic barrier. The amended scheme specified a fence, punctuated by a number of gaps, and at a height of 1.8m and less than the height identified for the Old Farm site. This height was not initially supported by technical evidence.
13. On the basis that the PPO had not considered the revised scheme, including the lower fence height and how it enclosed the site, it was reasonable that the PPO

made an assessment once the evidence was submitted. It emerged from this that the Council was not satisfied that the proposed mitigation would be effective.

14. It was not unreasonable of the Council to identify other impacts in response to the amended layout and the conclusions of the noise assessment, neither of which had been before the Council at the time it made its decision. Thus, whilst ostensibly an additional reason for refusal has been introduced, this was brought about by the changes made to the scheme introduced by the applicant as part of its appeal submissions.
15. I therefore conclude that the Council has not behaved unreasonably on procedural grounds by introducing a new reason for refusal. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Rachael Pipkin

INSPECTOR