
Costs Decision

Hearing Dates 26 July 2022 and 13 June 2023

Site visit made on 13 June 2023

by Hollie Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Costs application A in relation to Appeal Ref: APP/L1765/W/20/3259672 Greenacres, Pricketts Hill, Shedfield SO32 2JW

- 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 Winchester City Council for a partial award of costs against Mr P Green.
- The hearing was in connection with an extension to existing Gypsy/Traveller site to create a total of 5 additional pitches on the whole site comprising the siting of 5 mobile homes, 5 touring caravans, and the erection of 5 dayrooms.

Costs application B in relation to Appeal Ref: APP/L1765/W/20/3259672 Greenacres, Pricketts Hill, Shedfield SO32 2JW

- 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 P Green for a partial award of costs against Winchester City Council.
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Decisions

1. Costs application A – The application for partial costs is refused.
2. Costs application B – The application for partial costs is refused.

Background

3. The Planning Practice 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.

Submissions - Application A

4. The Council submitted its application for costs in writing before the resumption of the hearing. The Council allege that the Appellant has incurred wasted expense through failing to produce adequate mitigation for the nitrate neutrality aspects of the scheme despite being forewarned and having been provided with direction to do so after the adjournment of the initial hearing opening. After an extended period, a date was agreed for the re-convened hearing, but the Council highlight that the Appellant still failed to address this issue and requested yet another adjournment of the hearing. It is the Council's view that the Appellant had sufficient time prior to the initial hearing date and more than ample time after to secure the required mitigation, resulting in an unnecessary additional postponement. Furthermore, the Council also booked

and paid for a room for the appeal hearing that did not take place at all; the costs of which were not capable of being reclaimed.

Submissions – Application B

5. The Appellant highlighted the potential application for costs in writing on the 12 June 2023, prior to the resumption of the hearing. The application was confirmed verbally at the hearing itself and is made on the basis of the Council sustaining its case of no need and an over-supply of pitches despite the findings of the Gypsy and Traveller Accommodation Assessment of October 2022 (GTAA 2022). The Appellant claims the Council is unreasonable for maintaining this defence and that it has led to wasted expense through unnecessary preparation.

Chronology of Events

6. The hearing was initially scheduled for the 26 July 2022. On the 23 June 2022, I indicated to the parties, based on the written submissions, that there was a lack of evidence to demonstrate that the fourth and fifth reasons for refusal (RfR) were being addressed adequately. These reasons relate to effects on sites designated under the Habitats Regulations¹. The fourth RfR relates to the effects of increased recreation on the protected sites and the fifth RfR relates to the effect of additional nitrates being discharged into the Solent protected sites through additional wastewater. On a without prejudice basis, I made it clear that I would not consider it appropriate to use a Grampian condition to secure an undefined mitigation scheme, based on the absence of scientific certainty at the point of granting permission that such would adequately mitigate the effects of the scheme.
7. By the date of the opening of the hearing, the recreational effects matter (RfR4) had been addressed to the satisfaction of the Council through the submission of its template planning obligation and the payment of the relevant financial contribution. By the same date, some nitrate budget information had been submitted, but no planning obligation or other means to secure any form of on or offsite mitigation was submitted with it. The Appellant indicated that there appeared little option but to request an adjournment of the hearing, to which the Council agreed.
8. Following the adjournment, I wrote to the parties to indicate that the protected sites issues were to be the main focus of correspondence between the parties in the lead up to the date of the hearing resumption.
9. Some period of time elapsed, during which a revised hearing date was agreed for the 16 January 2023. During this time, some updates were provided on behalf of the Appellant about the limited progress made with the matter in hand. The Appellant criticises both the Council and Eastleigh Borough Council for a lack of prompt responses on this issue and requested in writing that the hearing should be delayed further to allow more time for the relevant means of mitigation to be secured.
10. As an aside, during this time, and on request, the Council provided the GTAA 2022 and an Update Statement on 5 January.

¹ The Conservation of Habitats and Species Regulations 2017, as amended

11. As it was clear to me, and as acknowledged by the Appellant, insufficient progress had been made on the nutrient neutrality matter to enable the hearing to proceed. Therefore, the sitting scheduled for the 16 January did not take place and the resumption of the hearing was postponed again.
12. Another period of time elapsed, during which the resumption of the hearing was agreed for the 13 June 2023.
13. On the 17 April I asked for the parties to clarify whether any evidence was going to be brought up to date and whether any planning obligations were to be submitted. On the 21 April the Council submitted an appeal decision and clarified that no draft obligation in respect of the nitrate neutrality issue had been received from the Appellant.
14. On the 26 April and following a further prompt to do so, the Appellant provided a substantive response to the Council's evidence submitted in January and the appeal decision submitted a week prior. It was at this point that the Appellant indicated that the Council's position on need and supply in the context of the GTAA may be unreasonable.
15. On the 17 May, following my prompt a day prior, a response was provided on behalf of the Appellant that the offer of nitrate mitigation credits had been secured from Eastleigh Borough Council and that a planning obligation securing such would be finalised by the date of the hearing. A draft planning obligation was provided. The Council had to be chased but provided confirmation that the draft planning obligation was satisfactory on the 1 June.
16. The updated agreed Statement of Common Ground (SoCG) was only submitted in draft by the Appellant's team following my prompts, only a day or so before the hearing. The planning obligation was then submitted and signed the day of the hearing itself.

Application A – Reasons

17. Ultimately, the onus is on the Appellant to provide mitigation details to the satisfaction of the competent authority. Despite the then newness and complexity of the nitrate neutrality issue, the Appellant is required to produce sufficient information to inform an appropriate assessment. I have highlighted that the information submitted in this regard has been difficult to extract from various submissions and has made my role as competent authority more difficult as a result.
18. I have some sympathy with the Council's belief that the Appellant has incurred wasted expense through failing to produce information in a timely manner. I have reason to doubt that the Appellant gave the matter insufficient attention and priority but am unable to conclude that this was entirely the reason for the inability to proceed with the hearing resumption in January 2023. I have taken into account the relatively novel means of securing the mitigation through a third party (Eastleigh Borough Council), which cannot be expected to prioritise adherence to appeal timescales. Additionally, some confusion over the relevant catchment areas for foul drainage may have contributed to the protracted discussions.
19. Taking the above into account, I consider that there were other contributory factors beyond the Appellant's control which cannot be eliminated and

therefore, I cannot assume deliberate unreasonableness on the part of the Appellant for which an award of costs could be justified.

Application B Reasons

20. The Appellant's partial claim for costs is based on the Council's lack of acceptance of the changed need and supply position following the publication of its GTAA in October 2022 and reluctance to agree an update to the SoCG in this regard.
21. The first acknowledgement provided by the Appellant to the change in circumstances was in late April, around three months after the Council had submitted the GTAA 2022 and update statement. The Appellant's response is outlined in an email containing around 9 key bullet points and specifically indicates that the response is provided "*...without seeking to go into great detail and examination of the GTAA itself*". Following this, it does not appear that any further preparation took place until I prompted the parties to agree an updated SoCG in the week before the hearing.
22. My appeal decision outlines my position in relation to the matter, and sides with the Appellant on this point. However, the Appellant's email submission on this evidence is relatively concise and limited evidence was offered to me verbally at the hearing beyond what had already been detailed in the email. Therefore, in my view, there is little evidence to suggest that wasted time has been incurred. The preparation was necessary after such a long delay and the matter of the disagreement of the need and supply position was addressed rather perfunctorily by the Appellant in any case.
23. For the above reasons, there is no evidence that wasted expense has been incurred in this case and an award of costs as sought under Application B is not justified.

Conclusions

24. In conclusion, there is no evidence that either party has intentionally behaved unreasonably, either substantively or procedurally in relation to the appeal application or the appeal itself or that delays could have been otherwise avoided.
25. Wasted expense, as described in the PPG, has not been demonstrated and awards of costs are therefore not justified.

Hollie Nicholls

INSPECTOR