



Costs Decision

Site visit made on 5 December 2023

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Costs application in relation to Appeal Ref: APP/R3705/W/23/3314041 Barn Fishery, Atherstone Road, Hartshill, Warwickshire CV10 0SA

- 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 North Warwickshire Borough Council for a full award of costs against Mr Willy McGinley.
 - The appeal was against the refusal of planning permission for a change of use of land to use as residential caravan site for 6 touring caravans, laying of hardstanding and ancillary development.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reason

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. It goes on to state that appellants are required to behave reasonably in relation to procedural and substantive matters in the appeal.
3. Firstly, the planning application sought permission for the provision of caravans whilst the barn on the site was converted. Permission was sought for a temporary 3 year period and it was expressly stated at that time that although the appellant was an Irish traveller, permission was not sought for a permanent gypsy site.
4. The appeal submission however indicated permission was sought for a permanent gypsy site and the appellant's agent confirmed this to be the case. The Planning Inspectorate advised the appellant that the appeal would be considered on the same basis as the application had been submitted, in accordance with government guidance, and my decision does this. No response by the appellant to this was received and the appeal proceeded on this basis. Though the appeal proceeded on a basis on which the appellant maybe did not now wish it to, it was not unreasonable for the appellant to allow the appeal to proceed.
5. The appeal submission in January 2023 included a draft statement of common ground (SoCG). The Council responded to this with their own draft SoCG in May 2023. The appellant failed to respond to this, nor to a follow up email in October 2023. I understand ill health on the part of the appellant's agent may have been responsible for some of this lack of engagement. Nonetheless, even

if some of the lack of engagement from the appellant was not due to ill health and therefore was unreasonable, it did not result in any wasted expense on behalf of the Council.

6. The appeal was originally due to be determined by a hearing on 5 December 2023. This date had been agreed with the main parties in September 2023. The appellant's agent notified The Planning Inspectorate, 12 working days before the hearing date, that he would be unable to attend the hearing due to a diary clash with another hearing. This admission, causing the hearing to be cancelled so close to the hearing date was unreasonable. Letters to interested parties notifying them of the details of the hearing had already been sent by the Council. The work involved in issuing these letters was therefore wasted.
7. The Council state that preparation for the hearing had already been done by the time the event was cancelled, and that this was more than that which would have been done for a written representation appeal. They also advise and that an advocate had been retained. However there is no substantive evidence of this. Moreover, the parties were given an opportunity to provide any additional comments following the change of procedure, and hence any additional work undertaken for the hearing could have been submitted in writing. Indeed a short additional statement was provided by the Council.
8. In summary, whilst the appellant has displayed unreasonable behaviour on a number of points, the only evidence before me of wasted expense incurred by the Council was the work involved in issuing notification letters to interested parties of the hearing. As such, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. 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 Mr Willy McGinley shall pay to North Warwickshire Borough Council the costs of the appeal's proceedings, more particularly described in the heading of this decision, but limited to the costs involved in issuing notification letters to interested parties for the subsequently cancelled hearing.
10. The applicant is now invited to submit to Mr Willy McGinley, to whom a copy of this decision has been sent, details of these costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

A Owen

INSPECTOR