
Costs Decisions

Hearing Held on 12 March 2024

Site visit made on 13 March 2024

by Frances Mahoney MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 October 2024

Cost application A

Appeal Ref: APP/D0515/W/23/3332133

Land North of the Spinney, Gail's Drove, Guyhim, Wisbech St Mary

- 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 Fenland District Council for a partial award of costs against Ms Sarah Smith.
 - The hearing was in connection with an appeal against the refusal of planning permission for the use of land for the stationing of caravans for residential purposes and dayroom ancillary to that use.
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Cost application B

Appeal Ref: APP/D0515/W/23/3332133

Land North of the Spinney, Gail's Drove, Guyhim, Wisbech St Mary

- 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 Ms Sarah Smith for a partial award of costs against Fenland District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the use of land for the stationing of caravans for residential purposes and dayroom ancillary to that use.
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Decision – Cost application A

1. The application for a partial award of costs is refused.

Decision – Cost application B

2. The application for a partial award of costs is refused.

Reasons

3. The Planning Practice Guidance states that irrespective of the outcome of an appeal, costs may only 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 associated appeal process.

4. The two costs claims are closely intertwined in respect of their grounds. Therefore, I have reasoned them together to avoid repetition and to aid clarity.
5. The essence of the Council's cost claim against the appellant is the contention that the appellant behaved unreasonably from a procedural point of view in respect of a lack of co-operation in providing requested information at the application stage. The then applicant refused to provide substantiating evidence pertaining to their Gypsy and Traveller status as the intended occupant of the pitch applied for. In failing to provide any relevant evidence in respect of her status as a Gypsy and Traveller, along with substantial delays between correspondence, the Council consider the appellant acted in a deliberately obstructive manner and failed to cooperate with the Council to proactively progress determination of the application, constituting unreasonable behaviour on her part.
6. The Council say this was a direct contributing factor in the matter of the subsequent appeal and costs incurred by them, causing the Council to have been put to unnecessary costs by reason of considerable administration costs in processing and accurately publishing the submitted details for public review, which were lengthy, disjointed and repetitive, and the Case Officer having to interpret and respond to the protracted arguments within the evidence.
7. The Council refused the proposed change of use on the basis that without the requested evidence to show the appellant met the definition of a Gypsy and Traveller, as set out in Planning Policy for Traveller Sites (PPTS), the proposal was considered against the terms of the relevant rural area development policies without any weight being ascribed to the balance of the decision in respect of Fenland Local Plan Policy LP5 Part D (Reason for Refusal 1).
8. Therefore, the proposal was considered based on being an isolated home in the countryside, where development would be restricted to that which would be demonstrably essential to the effective operation of local agriculture, horticulture, forestry, outdoor recreation, transport or utility services (Reason for Refusal 2).
9. However, following the submission of evidence in respect of need at the appeal stage the Council conceded that the absence of a robust evidence base in the form of an up-to-date local assessment of need for Gypsy and Traveller pitches (GTANA), and resultant expression of need, they did not know what the need for Gypsy and Traveller Accommodation was within their District.
10. They accepted there was an immediate unmet need for Gypsy and Traveller sites in the District, and a lack of a five-year housing land supply specific to the Gypsy and Traveller community. The Council conceded that both these elements should be ascribed substantial weight in the balance of the decision.
11. The submitted evidence in respect of the status of the appellant as a member of the Gypsy and Traveller community was also accepted and the Council did not defend the terms of reasons for refusal 1 and 2.
12. The appellant contends that it was not necessary to provide evidence of her Gypsy and Traveller status to demonstrate an identified need. The need can be ascertained through, amongst other things, an up-to-date GTANA. Both the

PPTS and FLP Policy LP5 Part D require the Council to maintain a local assessment of need for Gypsy and Traveller pitches¹. The outcome of the assessment would assist the Council in the determination of planning applications. At the time of the determination of the application and the appeal, the latest published evidence was dated November 2013, and this indicates that there is no need for the Council to identify any new pitches².

13. However, the Council are currently undertaking a new GTANA to be published later in the year. The findings will inform policy direction within the emerging Local Plan. That said, this is still some way off adoption and so the Council relied on the adopted policies of the FLP in the determination of the proposal.
14. FLP Policy LP5 Part D sets out that the Council would be prepared to grant permission for sites in the countryside provided that there is evidence of a need (as identified in the local assessment), and that the occupants meet the definition of Gypsy and Travellers or Travelling Showpeople as set out in Government guidance.
15. The Council acknowledged in their response to the Grounds of Appeal that they were unable to provide evidence of the extent of need in the District, but did accept there was an unspecified need contrary to the conclusion of the 2013 assessment quoted in FLP Policy LP5 Part D. However, under the terms of that policy it is also necessary to ensure that the intended occupants of Gypsy and Traveller accommodation applied for also meet the PPTS definition.
16. As a result, the Council contend that if the application was to be considered against the relevant Gypsy and Traveller policies, then before it could be determined, details of the then applicant's status as a Gypsy and Traveller should be submitted. If such information was not provided then the terms of FLP Policy LP5 Part D, and the PPTS could not be applied, and the change of use would be considered without reference to Gypsy and Traveller occupancy.
17. The appellant contends that her status was irrelevant as the permission would run with the land and it was for one gypsy pitch with the implication the person who occupied the pitch would be a member of the Gypsy and Traveller community, and this could be secured by means of the appropriate planning condition covering the occupancy of the gypsy site.
18. The appellant's costs application centres on the assertion of the irrelevance of the Council insisting on the submission of evidence of the status of the then applicant, which she says led to unnecessary and wasted costs in addressing the two undefended reasons for refusal, which resulted from the Council's misdirection on the interpretation of FLP Policy LP5 Part D.
19. The wording of FLP Policy LP5 Part D identifies that the Council should be prepared to grant permission for sites in the countryside provided that there is evidence of a need and that the intended occupants meet the definition of Gypsy and Travellers as set out in the PPTS³.
20. The Council had no up-to-date assessment of the need for Gypsy and Traveller accommodation and, in the face of the policy assertion that, based on a long out-of-date assessment (2013), there was no need for any new pitches, they

¹ GTANA.

² FLP Policy LP5 Part D.

³ Compliance with the various policy criteria is also necessary.

accepted that there was an immediate and pressing need for such accommodation. This evaluation of need should have been the primary factor weighing into the decision in respect of FLP Policy LP5 Part D, having considered the specified policy criteria. Whether the intended occupants meet the definition as Gypsy and Travellers was a further policy consideration.

21. However, whilst the agreed description of the proposal does not mention that the change of use is for the accommodation of a member of the Gypsy and Traveller community, it is clear from all the supporting documentation at the time the application was considered that this was the intention. In the circumstances of a pressing need the securing of the occupation of the proposed pitch to a member of the Gypsy and Traveller Community could have been simply secured by the imposition of a commonly used planning condition.
22. I agree with the appellant that it was not necessary to prove her status to invoke the terms of FLP Policy LP5 Part D. If she or a future occupier of the pitch did not comply with the terms of the occupation condition, then the Council could have sought a remedy through the enforcement of those terms.
23. Therefore, whilst there may have been a lack of co-operation on the part of the appellant in providing requested information on Gypsy and Traveller status at the application stage, I conclude that this was not unreasonable behaviour as it was not necessary for such information to be submitted to enable the Council to appropriately interpret the relevant local plan policies⁴ and come to a balanced decision in this instance. Therefore, I find the appellant did not behave unreasonably and the cost claim of the Council (A) fails.
24. Having so concluded on the Council's cost claim against the appellant, I must consider whether the Council's insistence on the submission of evidence of the status of the then applicant amounted to unreasonable behaviour which led to unnecessary and wasted costs for the appellant in addressing the two undefended reasons for refusal which resulted from the Council's misdirection on the interpretation of FLP Policy LP5 Part D.
25. At face value it could be said that the Council's actions did amount to unreasonable behaviour. In interpreting policy as they did and insisting on the relevance of personal status this led to the refusal of the appeal on 2 grounds. These grounds were conceded before the opening of the Hearing due to the evidence the appellant submitted at the appeal stage.
26. However, it must then be considered whether it then led the appellant to unnecessary or wasted costs.
27. The then applicant stuck to her guns and did not submit the requested information on status at the application stage. However, at the appeal stage this evidence was provided to me which conclusively showed the appellant to be a member of the Gypsy and Traveller community⁵.
28. The appellant confirmed that this information was provided as part of the appeal documentation in case the decision-maker took a contrary view to that

⁴ FLP Policy LP5 Part D also acknowledges that irrespective of whether an up-to-date need is identified or not the Council will determine applications on a case-by-case basis.

⁵ A point agreed by the main parties and not contested further.

of the appellant in respect of the interpretation of FLP Policy LP5 Part D and the personal circumstances and status of the appellant became relevant.

29. The appeal was allowed, and I agreed with the appellant that it was not necessary to establish an individual's status in this instance as a determining factor in the weight that should be attributed to compliance with the relevant local plan policy of this particular case. However, the appellant chose to provide the status evidence as part of the appeal documentation. This evidence was very limited, in essence, amounting to a short witness statement.
30. The Council, having accepted that reasons for refusal 1 and 2 were indefensible, the appeal centred on matters dealing with the appeal site's location in Flood Zone 3 where there was a high probability of flooding⁶. The PPTS sets out that Local Planning Authorities should ensure that their policies do not locate sites in areas at high risk of flooding, given the vulnerability of caravans⁷.
31. The then applicant had submitted a Flood Risk Assessment which had been evaluated by the Environment Agency and the Council at the application stage. What was missing was a sequential test, risk-based approach to the location of development⁸, along with appropriate flood risk management. The discussion and examination of the submitted evidence at the Hearing was very useful for a proper understanding of the issues, particularly having representatives of the Environment Agency present.
32. Whilst I came to the view that in the circumstances of the appeal proposal the sequential test had been met, this is a matter of professional judgement in the context of the expanded evidence of the appeal.
33. In my view the application for the single Gypsy and Traveller pitch would have ended up at appeal in any case based on the flooding concerns alone. The addressing of the matters in respect of Gypsy and Traveller status related to need involved little time at the Hearing and the supporting evidence in this regard was also limited.
34. Therefore, I agree the Council did behave unreasonably for the reasons set out above, but this has not resulted in unnecessary or wasted expense as described in PPG. Consequently, the appellant's application for an award of costs (B) is not justified.

Frances Mahoney MRTPI IHBC

Inspector

⁶ The proposal was also refused under the terms of FLP Policy LP14 Part B Flood Risk and Drainage.

⁷ PPTS para 13 g).

⁸ National Planning Policy Framework Para 168.