
Costs Decision

Hearing held on 9 October 2024

Site visit made on 9 October 2024

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2025

Costs application in relation to Appeal Ref: APP/X0360/C/22/3311592 Land at New Acres, Nine Mile Ride, Wokingham RG40 3LZ

- 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 Wokingham Borough Council for an award of costs against Ms Mary Bowers.
 - The appeals were against the Council's decision to issue an enforcement notice against the material change of use of the land to use for the stationing of mobile homes/caravans for the purposes of human habitation together with associated hard surfacing, ancillary outbuildings, but not limited to, kennels, play areas, fencing and lighting.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. This costs application is made by the Council in respect of both procedural and substantive grounds. The procedural element relates to the fact that, save for a covering letter submitted to accompany the on-line appeal form, the appellant did not provide a Written Statement. The appeal guidelines require this within six weeks of the appeal 'start date'. Further, during the appeal process the Council sent a series of e-mails to the appellant's agent in an attempt to prompt the drawing up of a s106 legal agreement for the required SPA financial contribution should the appeal be allowed and planning permission granted. These e-mails met with no response, and the Council has provided me with these to demonstrate the lack of co-operation on the appellant's part. Finally, on the procedural grounds claimed the appellant failed to draw up a draft Statement of Common Ground in a timely manner so as the Council might agree certain points to facilitate the proceedings at the Hearing.
4. For the appellant's part, the agent claimed at the Hearing that the Council's Statement of Case was never received. I indicated at the event that I would check this claim and, in fact, there is an official letter from PINS dated 24 February 2023, which was e-mailed to the agent's firm along with the Council's

said Statement. Accordingly, I find the agent's stance that the absence of evidence by the Council prevented the production of any Written Statement hard to believe. Besides, it was open to the agent to produce a full response to the enforcement notice itself; particularly in respect of the stated reasons for the notice's issue.

5. Regarding the other two points, the agent's representations in response to the Council's claim for an award of costs is unconvincing and, at best, thin. Similarly, there is little to support the response to the Council's claim on substantive grounds as to why no site specific flood risk assessment (FRA) was ever commissioned. When I questioned the agent as to why the FRA issue had not been addressed he merely remarked that this had been covered by the relevant material submitted in support of the 2017 appeals for nearby sites, which I refer to in my main decision. 'Site specific' is the key but, further, the appeal site lies within a more vulnerable flood zone than do those the subject of the previous appeals. The agent also commented that there seemed little point in paying out money for a FRA in the event that the findings might be unfavourable. That said, the appeal's covering letter did indicate that relevant evidence would follow. This never materialised.
6. Having reviewed the appeal papers and, in particular, the appellant's case in its entirety, it is clear that there is little to support the grounds of appeal made. To my mind this is indicative of the lack of written evidence provided. I accept that an absence of funds may have played a part, but the appellant did choose to pay for a deemed planning application. Whether or not the agent did have sight of the Council's amplified case would not necessarily have disadvantaged the appellant given that the Council's case is clear from the content of the enforcement notice itself. As mentioned, the bare bones of the appeal grounds were advanced at the outset and these could have been expounded.
7. Given the paucity of the appellant's case there was little for the Council to respond to. Following the completion of a new GTAA the Council did rightly forward the updated five year land supply figures to both the agent and PINS, yet the agent did not respond to this as it was considered as 'late evidence'. This is somewhat absurd as the updated figures would obviously be explored as a material consideration at the pending Hearing. The figures actually supported the grounds of appeal yet, prior to this, there had seemingly been little analysis of the previous position nor that of the development's effect on the landscape. Nonetheless, in the event I gave the agent time to respond to the GTAA's findings and, in turn, allowed the Council time to comment, accordingly.
8. In essence, therefore, the Council played by the rules whereas the appellant chose not to or, instead, found that the case presented difficulties. Most likely this was because the appeal was something of forlorn hope as it was directly set against not only policy but facts. So, on reflection, I feel that the extent of the appeal itself was unwise and, at the point it was lodged, it seems likely that there was insufficient grasp of the issues involved, or how they would play out. However, once made, I understand why the agent did not withdraw the appeal; the appellant's position needed to be protected, and this probably dictated the approach subsequently taken. This also would seem to have brought about the change late in the process whereby the agent then indicated that only a three year temporary planning permission was being sought.

9. I therefore sympathise with the Council, and if there had been points of actual contention then I feel the Council would have been put to additional work, and the outcome of any costs claim would most likely have been different. This never arose. Ultimately, the GTAA's updated identified need for gypsy and traveller sites helped the appellant's case but, as mentioned, the Council was bound to produce the revised figures and no additional work was undertaken here. Similarly, e-mails sent to the agent by the Council as to drafting a s106 agreement in an attempt to narrow down the grounds of appeal – although they should not have been necessary – were hardly onerous. Also, given the content of the appeal papers a comprehensive and agreed Statement of Common Ground would not have necessarily aided the proceedings.
10. In the event the appeal was partly successful, but only insofar as it resulted in an additional three months for compliance with the required steps, as I considered this reasonable in the circumstances. The appeal, therefore, proved necessary – the enforcement notice also required correction – but the grounds could have been limited, accordingly. That said, the Council would still have had to amplify its case and why it was considered expedient to issue the enforcement notice.
11. All in all, therefore, despite the lack of evidence produced by the appellant to support her appeal I cannot accept that the Council incurred significant unnecessary or waste expense. Accordingly, for the reasons given above, I am satisfied that unreasonable behaviour, as described in the PPG, has not been demonstrated.
12. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR