
Costs Decision

Inquiry held on 8, 9 & 10 October 2013

Site visit made on 9 October 2013

by Susan Heywood BSc (Hons) MCD MRTPI

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

Decision date: 7 February 2014

Costs application in relation to Appeal Ref: APP/L3245/A/13/2196615 Adbo Farm, Rosehill, near Market Drayton, Shropshire TF9 2JF

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Paul Brooks for a full or partial award of costs against Shropshire Council.
 - The inquiry 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 for 4no. gypsy pitches together with the formation of additional hard standing and utility/dayrooms ancillary to that use.
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Decision

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

The submissions for Mr Brooks

2. The application for a full or, in the alternative, a partial award was made in writing and at the inquiry and the main points are summarised below.
3. The Council refused planning permission for a development which should clearly have been permitted. This is unreasonable behaviour as per paragraph B15 of *Circular 03/2009 Costs Awards in Appeals and Other Planning Proceedings* (the Circular). Paragraphs B25, B29 and B16 of the Circular also support the claim.
4. Refusal of the application due to the absence of an ecological report (Reason 4) was unreasonable; there was no need for such a report. This reason for refusal was withdrawn prior to the inquiry and was not therefore substantiated.
5. Refusal of the application on highway safety grounds (Reason 3) was unreasonable as the Council did not recognise that the visibility splay was under their control. This reason was withdrawn prior to the inquiry and was not therefore substantiated.
6. Reason for refusal 1 (lack of local connections) relies on policy CS12 which is unlawful as it discriminates against a protected group. The Council are also not seeking a condition to limit the use to gypsies with a local connection. The policy does not comply with national policy and the Council have failed to substantiate this reason for refusal. They also ignored national policy which allows for private gypsy and traveller sites to be located in the countryside.

7. Reason for refusal 2 (character and appearance) fails to adequately consider the impact of the live / work unit and existing touring caravan site. The Council have failed to substantiate this reason for refusal.
8. The Council have failed to have regard to national policy in the *National Planning Policy Framework* (the Framework) or *Planning policy for traveller sites* (PPTS); they failed to consider sustainability in terms of paragraph 11 of PPTS as such they also failed to substantiate this reason for refusal.
9. The Council did not have regard to the absence of a 5-year supply of land for gypsy pitches. This means that their policies are not up to date and therefore the presumption in favour of sustainable development should have been applied. They failed to give weight to the need for sites, the lack of alternatives and the ongoing failure of policy to meet the need. In addition they failed to consider the imposition of a temporary condition, contrary to paragraphs B25 of the Circular.
10. The failure to substantiate reasons for refusal and ignoring national and partly development plan policy is contrary to paragraphs B16 and B29 of the Circular.

The response by Shropshire Council

11. The response was made in writing and at the inquiry and the main points are summarised below.
12. In failing to provide basic information in relation to the proposed occupiers, the appellant himself has not acted in a manner which engages constructively within the planning system. This information was not received until the appeal stage despite a number of requests.
13. The Council's landscape objection (reason for refusal 2) was properly arguable and respectable and did not conflict with paragraph B16 of the Circular. The Council's case is based on *The Shropshire Landscape Typology* document. The Council set out that the harm is accentuated by the presence of a public footpath which provides views of the site. This is a matter of judgement. The Circular advises that an award of costs is unlikely if realistic and specific evidence is provided about the impact of the development. This was provided by the Council.
14. Reason for refusal 1 (local connections) is reasonable. Policy CS12 is not unlawful and has been through an examination by an Inspector. National policy supports the approach in CS12.
15. Reason for refusal 3 (highway safety) was reasonable. The Statement of Common Ground said that "at the time of the planning decision the actual visibility at the site access was below desirable standards". Only following the refusal was the telegraph pole moved and visibility was then deemed to be acceptable.
16. Reason for refusal 4 (ecological assessment) was reasonable. The Council followed the advice of the County Ecologist that the information was required to satisfy the Council's obligations under the Conservation of Habitats and Species Regulations 2010. This advice was reasonable given the close proximity of the development to a mature hedgerow and as the application involves considerable hard surfacing.

17. Additional information was only provided in regard to reasons 3 and 4 after the appellant had submitted his appeal. The reasons for refusal were withdrawn as soon as the Council became satisfied that the additional information overcame their concerns. This was some three months before the inquiry opened. This information ought to have been provided at the application stage and the appellant has not been put to unnecessary expense.
18. Relevant national policy is addressed in the Council's evidence to the inquiry. The application should fail.

Reasons

19. Circular 03/2009 advises that, irrespective of the outcome of the 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 appeal process.
20. The Council's reasoning relating to the application is set out in their Committee Report. This outlines the key issues to be taken into account in the assessment of applications including the existing level of local provision and need for sites and the availability (or lack) of alternative accommodation for the applicants. The Report goes on to indicate the level of need identified in the Core Strategy (policy CS12) but it makes no attempt to assess the current level of need or availability of sites.
21. The Report does not refer to advice in PPTS relating to the requirement for the Council to identify a 5-year supply of specific deliverable sites for gypsies and travellers. Furthermore, it does not have regard to the advice in paragraph 21 of PPTS that the proposal should be considered in the light of the presumption in favour of sustainable development. Nor does it have regard to the advice in the Framework that this provision applies in the absence of a 5-year supply of such sites.
22. It would appear therefore that the Council did fail to have regard to relevant national planning policy when determining the application, contrary to paragraph B29 of the Circular. If proper regard had been had to these matters, the Council should have applied the principle that the development should have been permitted unless the adverse impacts significantly and demonstrably outweighed the benefits (paragraph 14 of the Framework).
23. The Council argued at the inquiry that the impact on the character and appearance of the area amounted to significant and demonstrable harm. But, there is no indication that regard was had to the application of paragraph 14 of the Framework in the decision making process. It is not therefore evident from the Committee Report that the Council followed a balanced approach in considering the various aspects of this case. The Report is heavily biased towards the harmful aspects of the proposal without balancing these with aspects which should have weighed in its favour. I acknowledge that some of these matters were considered in the Council's Proof of Evidence. However, the decision making process which led to the refusal was flawed in this respect.
24. I acknowledge that the appellant did not provide information to the Council at the time of the application relating to the proposed occupiers of the site. Accordingly, it was not possible for the Council to assess the weight to be given to the personal circumstances of the occupiers (in accordance with PPTS

- paragraph 22c). Nor was it possible for them to properly consider whether there were any alternative accommodation options for the occupiers (PPTS paragraph 22b). However, even for a general needs gypsy site, which is how this application was made, the Council should have considered the lack of a 5-year supply of deliverable sites and the lack of availability of alternative sites to meet that general need through the development plan process.
25. If proper regard had been had to these matters, the Council should have given significant weight to the lack of a 5-year supply, at least in considering whether a temporary planning permission should have been granted. There is therefore a reasonable possibility that planning permission would have been granted, as a minimum, for a temporary period and an appeal may have been avoided.
26. Furthermore, reason for refusal 3 (relating to highway safety) was withdrawn prior to the appeal being heard following discussions between the Council's and appellant's highway experts. The Council accepted that the deficiencies in the visibility splay could be overcome by cutting back the hedge within the highway verge. It is therefore clear that they agreed that this matter could have been overcome by the imposition of a suitably worded condition, as is evident by the agreement in the Statement of Common Ground. Refusing the application on this ground was therefore contrary to the advice in paragraph B25 of the Circular which states that authorities risk an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.
27. The Council argued at the inquiry that the deciding factor was the removal of a telegraph pole within the visibility splay. However, the Council's Committee Report sets out the Highway Authority's concerns relating to highway safety. It states that visibility "is restricted in both directions along the principal road; in the westerly direction by the adjoining boundary hedge and telegraph pole and in the easterly direction by the horizontal alignment of the carriageway and adjoining highway boundary hedges / trees". It is therefore clear that the position of the telegraph pole was not the sole concern of the Council. Furthermore, it is generally recognised¹ that occasional slim obstacles will not have a significant impact on highway safety. It is therefore unlikely that the application would have been refused on this ground if the telegraph pole had been the only issue.
28. Turning to reason for refusal 4 (lack of an ecological assessment), ODPM Circular 06/2005² states that the presence of a protected species is a material consideration when a planning authority is considering a development that would be likely to result in harm to the species or its habitat. It advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. Ecological surveys should only therefore be left to be dealt with under planning conditions in exceptional circumstances. However, it goes on to say "bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development" (paragraph 99).

¹ Advice is given in Manual for Streets paragraph 7.8.6

² Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System

29. There is no evidence in this case that there were any reasons to consider that there was a likelihood of any protected species being present on the site. This was confirmed once the ecological assessment was carried out. Whilst I have imposed a condition in order to protect potential bat flight corridors along the hedges from light pollution, such a condition could have been imposed without first requiring survey work to be undertaken. Accordingly, having regard to Government advice on this matter, it should not have been necessary for the appellant to undertake an ecological assessment.

Overall conclusion

30. I conclude that the Council did act unreasonably in ignoring relevant national policy and this was contrary to the advice in paragraphs B29 of the Circular. Furthermore, it was unreasonable of the Council to have refused the application due to the lack of appropriate visibility splays and due to the lack of an ecological assessment when these matters could have been resolved by the imposition of suitable conditions. A condition limiting the development to a temporary period could also have allowed it to proceed. This is contrary to paragraph B25 of the Circular.
31. Had the Council paid proper regard to these matters, on the balance of probability, it is likely to have resulted in the application being granted (at least for a temporary period) and an appeal would have been avoided. Accordingly, the Council's unreasonable behaviour has resulted in the appellant incurring unnecessary cost in appealing against the refusal. An award of costs is therefore justified.
32. In relation to reasons for refusal 3 and 4 (highway safety and ecology) the costs should be limited to costs incurred during the appeal process as indicated in Paragraph A12 of the Circular³. I understand that it was necessary for the appellant to appoint experts to produce information which led to the Council deciding not to defend these reasons for refusal. However, the letters between the Council and the appellant relating to these matters were dated 21st November 2012, 19th December 2012 and 23rd January 2013. The appeal was lodged on 17th April 2013 and the Council indicated in their Statement of Case, received by The Planning Inspectorate on 19th July 2013, that they would not be pursuing these reasons for refusal.
33. Accordingly, the costs award relates to the costs incurred by the appellant in appealing against the Council's decision. However, the award is limited, in so far as it relates to costs incurred in refuting reasons for refusal 3 and 4, to those costs incurred between 17th April and 19th July 2013 inclusive.
34. I have had regard to the other matters raised in the appellant's claim, but these do not add to the overall conclusion.

Costs Order

35. 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 Shropshire Council shall pay to Mr Paul Brooks, the costs of the appeal proceedings described in the heading of this decision limited, in so far as it

³ The footnote to that paragraph states that the appeal process is regarded for costs purposes as starting from the submission of the appeal and ending on the date when the appeal is concluded.

relates to costs incurred in refuting reasons for refusal 3 and 4, to those costs incurred between 17th April and 19th July 2013 inclusive.

36. The applicant is now invited to submit to Shropshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching 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.

Susan Heywood

INSPECTOR