



Costs Decisions

Hearing held and site visit made on 11 January 2024

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 5 February 2024

Costs applications in relation to appeal ref: APP/J0540/W/23/3328478 Land south west of Northey Road, adjacent to Barsby Meats, Northey Road, Peterborough PE6 7YX

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Application A is made by Mr Billy Joe Vinden for a partial award of costs against Peterborough City Council.
 - Application B is made by Peterborough City Council for a full award of costs against Mr Billy Joe Vinden.
 - The appeal was against the refusal of planning permission for the use of land for the stationing of caravans for residential purposes and the erection of a dayroom and laying of hardstanding ancillary to that use.
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Decision

1. Application A for a partial award of costs is allowed in the terms set out below.
2. Application B for an award of costs is refused.

Reasons

3. 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. Awards of costs may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

Application A

4. The appellant's costs application is based on substantive issues. The application relies on two of the examples given in the PPG of the types of behaviour which may give rise to a substantive award against a local planning authority. These were, firstly, refusing planning permission on a planning ground capable of being dealt with by conditions and, secondly, not following, well-established case law.
5. Prior to deciding the application, the Council gained confirmation that the proposal was intended as Gypsy and Traveller accommodation. It had not acted unreasonably in requesting evidence of a need for the accommodation proposed and the intended occupants Gypsy and Traveller status, as defined in the Planning policy for traveller sites (PPTS)¹. These were the criteria required by Policy LP10 of the Peterborough Local Plan for allowing Gypsy and Traveller sites in the countryside. The Local Plan had been found sound on Examination,

¹ Planning policy for traveller sites – Annex 1: Glossary

- with the Inspector having had regard to the Public Sector Equality Duty and the Council's Equality Impact Assessment². This was in respect of the protected characteristics of, amongst others, Gypsies and Travellers. As Policy LP10 was permissive of sites in the countryside, where housing might normally be resisted, the Inspector held this to provide a generally positive impact.
6. What is unreasonable in this case is the lack of a proper planning balance in the absence of this requested information. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The PPTS is clearly a material planning consideration in this case, and applications should be assessed and determined in accordance with this and the National Planning Policy Framework, with its presumption in favour of sustainable development. All of this means that, whilst development plan policy is a starting point, there remains a balancing exercise to undertake in respect of any conflict with this.
 7. The case had been made to the Council that, as permission would run with the land, the application of a standard condition would restrict occupation to Gypsies and Travellers, irrespective of the applicant's status in this regard. Furthermore, the Council had recognised an 'unknown' need existed for up to 16 pitches between 2016 and 2036. Although the identification of need might reasonably be applied by the Council on a case by case basis, there is nothing in Policy LP10 inferring this should be a personal one.
 8. The Council's delegated report found the proposal to be unacceptable having been assessed in the light of all material considerations. However, the decision seems to have been based entirely on the absence of evidence over personal Gypsy and Traveller status and need. Beyond this, the Council had not established any tangible harm from the proposal. No site specific harm had been identified, such as in relation to character and appearance or accessibility to schools and other services. Furthermore, the Council had not weighed the factors clearly in favour of the proposal against any degree of harm, particularly in the light of the PPTS and the Government's aim to promote more private traveller site provision.
 9. An award of costs does not necessarily follow on from the appeal decision. However, in this case the Council had not demonstrated any tangible harm other than a conflict in principle with the policy for allowing Gypsy and Traveller accommodation in the countryside. An occupancy condition could have secured the benefit of two Gypsy and Traveller pitches, regardless of the lack of personal details. Refusing planning permission on only this basis, not accounting for the benefits of the proposal, amounts to substantively unreasonable behaviour.
 10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred. This wasted expense is that involved in contesting the refusal reason relating to the lack of evidence regarding personal Gypsy and Traveller status and need. Consequently a partial award of costs is warranted.

² Report to Peterborough City Council by Louise Crosby MA MRTPI an Inspector appointed by the Secretary of State Date: 16 April 2019

Costs Order

11. 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 Peterborough City Council shall pay to Mr Billy Joe Vinden, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the refusal reason over the lack of evidence regarding personal Gypsy and Traveller status and need; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Peterborough City Council details of those costs with a view to reaching agreement as to the amount.

Application B

12. The Council's costs application is based on procedural issues. Examples of procedurally unreasonable behaviour which may result in an award of costs include resistance or delay in providing information or only supplying relevant information at appeal when it was requested, but not provided, at the application stage³.
13. The Council's case for unreasonable behaviour is over the failure to provide details of the applicant's need for the proposed residential caravans and his Gypsy and Traveller status. Had the information subsequently provided at appeal been submitted at the application stage this would have avoided the refusal of planning permission and the resulting costs of the appeal and hearing.
14. However, in my decision I have found no reasonable requirement to provide details of either personal need or Gypsy and Traveller status for the appeal to succeed. This was given an acknowledged general need for the accommodation applied for and the sufficiency of a condition to ensure the provision of this. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs to the Council is not warranted.

Jonathan Price

INSPECTOR

³ PPG Paragraph: 052 Reference ID: 16-052-20140306 Revision date: 06 03 2014

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