
Costs Decisions

Hearing held on 22 October 2014

Site visit made on 22 October 2014

by Philip Major BA (Hons) DipTP MRTPI

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

Decision date: 11 November 2014

Application A.

**Costs application in relation to Appeal Ref: APP/H0738/A/14/2219596
Highbridge Paddock, Urlay Nook Road, Eaglescliffe, Stockton-on-Tees TS16
0QB.**

- 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 Mr Lee McStravick for a full award of costs against Stockton-on-Tees Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Application B.

**Costs application in relation to Appeal Ref: APP/H0738/A/14/2219674
Highbridge Paddock, Urlay Nook Road, Eaglescliffe, Stockton-on-Tees TS16
0QB.**

- 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 Mr Lee McStravick for a full award of costs against Stockton-on-Tees Borough Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for an additional private gypsy pitch to accommodate 1 static caravan, 1 touring caravan, parking spaces, amenity block and associated infrastructure.
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Preliminary Matter

1. In each appeal the Appellant submitted written costs applications, and the Council provided written responses. I therefore record the main points of those applications only.

Decisions

2. Application A is allowed as set out below.
3. Application B is refused.

Application A

The submissions for Mr Lee McStravick

4. The application is made on the basis that a full award of costs should be made. Planning Practice Guidance (PPG) indicates that the aims of the costs regime

- include the encouragement of local planning authorities to properly exercise their development management responsibilities, and to rely on reasons for refusal which stand up to scrutiny. Planning authorities are at risk of an award of costs if they behave unreasonably with regard to the substance of the case, such as by unreasonably refusing planning applications. In this case the Council has acted unreasonably and the Appellant has been put to wasted expense by the Council's unreasonable decision to refuse the application before it.
5. PPG gives examples of the types of behaviour which may give rise to an award of costs. This includes preventing or delaying development which should clearly be permitted having regard to accordance with the development plan, national policy and any other material considerations. In this case Core Strategy Policy CS9 was based on the extant national guidance. At the time of determination of the application in 2011 it was acknowledged that the appeal site was acceptable as there were no other suitable sites available, and none likely to be so in the foreseeable future. It is common ground that the Council cannot demonstrate an up to date 5 year supply of sites as required by PPTS. The proposed development plan document intended to remedy the situation has been abandoned and the Appellant therefore had no option but to appeal.
 6. The original report into the application in 2011 reached the conclusion that refusal would not be warranted for sustainability reasons. That being so the same argument should apply to any Gypsy family, not just the Appellant. The report also concluded that there was compliance with Policies CS1, CS2, CS3, CS9, CS 10 and saved Local Plan Policy EN13. The suggestion of an alternative time limited condition was unreasonable.
 7. The current application has therefore been unreasonably refused and the Appellant has been put to wasted expense.

The response by Stockton-on-Tees Borough Council

8. The Council determined the application in accordance with national and local planning policy and guidance and the reasons for refusal are fully detailed.
9. The fact that the Council has abandoned the intended development plan document on Gypsy and Traveller site provision in order to enable more detailed consultation and comprehensive land availability analysis. But this change would not have affected the decision on the application as the considerations are the same.
10. The original application was accepted as suitable only in respect of local infrastructure, but not in regards to sustainability. The full report at the time makes this clear. The site was not considered suitable for a permanent site at that time.
11. In view of the subsequent comments by the Inspector made in determining a planning appeal on the site the Council considers that a permanent permission would be unacceptable. A suggestion of a temporary permission was made in the light of the fact that circumstances had not changed since the original permission was granted.
12. The Council has not acted unreasonably and an award of costs is not justified.

Application B

The submissions for Mr Lee McStravick

13. The application is made on the basis that a full award of costs should be made. PPG states that the aims of the costs regime include the encouragement of local planning authorities to properly exercise their development management responsibilities, and to rely on reasons for refusal which stand up to scrutiny. Planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter at appeal, for example by unnecessarily refusing or failing to determine an application, or by unreasonably defending an appeal.
14. The Council acted unreasonably in this instance. The application was registered on 5 February 2014, with a target date of 2 April. The appeal against non determination was made on 29 May, 8 weeks after the target date. The appeal was necessary in order to link the case with the other matter the subject of these appeals. The Appellant has been put to wasted expense through the Council's non determination of the application, and the need to appeal a scheme which should have been permitted without delay.
15. PPG gives examples of the types of behaviour which may give rise to an award of costs. This includes preventing or delaying development which should clearly be permitted having regard to accordance with the development plan, national policy and any other material considerations. In this case Core Strategy Policy CS9 was based on the extant national guidance of the time. PPTS has superseded that guidance and requires Councils to demonstrate a 5 year supply of deliverable sites. It is common ground that the Council cannot demonstrate an up to date 5 year supply of sites as required by PPTS. The proposed development plan document intended to remedy the situation has been abandoned.
16. The appeal site has been shown to be acceptable in sustainability and landscape terms, and the Director of Technical Services raised no objections. The site is acceptable on a permanent basis when assessed against the development plan and other material considerations, and the Council has prevented and delayed a development which should have been permitted. The Appellant therefore had no option but to appeal.

The response by Stockton-on-Tees Borough Council

17. The application went beyond its target date as a result of the need to make requests for additional information during April and May. The Appellant's agent had been notified of the intention to recommend refusal of the application on 20 May so the Council's position was clear at that time. Had the application been refused in accordance with the draft report it would still have been necessary to go to appeal. Non determination did not therefore alter this situation.
18. There was a reasonable case for refusing the application. The case has been made in relation to sustainability, and in relation to further development at a site which had already been considered in an earlier appeal.
19. Proper consideration is due for windfall sites which come forward in the absence of a supply of deliverable sites, but this site is considered unsuitable

for permanent occupation. In view of the preferred plan led approach to provision a temporary permission would have been more appropriate here. The Council asked that this be considered by the Appellant, and if this suggestion had been supported it is likely that a temporary permission would have been supported by the Council Officers.

20. As an appeal would have been necessary in any case the Appellant has not been put to unnecessary expense and an award of costs is not justified.

Reasons

21. Planning Practice Guidance 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 expense in the appeal process.

Application A

22. As will be seen from my appeal decision I do not agree with the Council's reasoning in its refusal to remove the disputed condition. The informative within the original planning officer's report confirms that the policies considered included CS9 and EN13, which are also in play in this appeal. Amongst other matters the informative states clearly that the scheme accords with the policies, is acceptable in principle, and is in keeping with the appearance and character of the surrounding area. It confirms that there are no material considerations which indicate a decision other than approval.
23. The only change now relied upon by the Council is my own decision on a different appeal. That appeal was for a very different development and was not made in the context of Gypsy and Traveller policy. The cases are not comparable. In my view the Council has been unduly reliant on a decision of limited relevance.
24. The permission granted in 2011 was for a mixture of operational development (hardstanding, decking for example) and the use of land (siting of caravans). In my view it was not an application for a C3 residential use and the Council's position on this seems to me to be a distraction from the main considerations.
25. Put simply, the planning permission document indicated that the proposal complied with policy and there were no other material considerations suggesting otherwise. Planning permission should therefore have been granted, as indeed it was. But imposing a personal permission (or a temporary permission as subsequently canvassed) was not justified then, and I have seen nothing since to convince me otherwise. The disputed condition does not meet the test of necessity or reasonableness set out in PPG. As a result I find that the Council has acted unreasonably in causing this appeal.

Application B

26. Again, I do not agree with the Council's reasoning, but this case differs from the disputed condition case. Here, the proposal is for an entirely new Gypsy pitch, which would intensify the use of the land.
27. Whilst I agree with the Appellant in terms of the sustainability credentials of the site, I accept there was an arguable case in relation to the impact on the countryside. It is regrettable that the application took longer to 'determine'

than would be ideal, but there was no necessity for these 2 appeals to run together as they are discrete entities. However I recognise the sense in conjoining them.

28. The Council has made its case relating to the countryside impact of a second pitch, and although reliance on my reasoning for an entirely different proposal again stretches matters, I am satisfied that a respectable case has been presented in this respect. The Council's actions in that matter are not unreasonable.
29. It is therefore clear that there would have been an appeal in any event. The cases in both appeals on sustainability are essentially the same, so the Appellant has not been put to extra expense in this case. So even were I to find that the Council had no grounds for raising sustainability as an issue, there has been no wasted expense.
30. Taken in the round I am satisfied that the Council has presented a respectable case in this appeal, and in any event there would have been no wasted expense. This application fails.

Costs Order

Application A

31. 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 Stockton-on-Tees Borough Council shall pay to Mr Lee McStravick, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting appeal ref: APP/H0738/A/14/2219596.
32. The applicant is now invited to submit to Stockton-on-Tees Borough 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.

Application B

33. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Policy Guidance, has not been demonstrated.

Philip Major

INSPECTOR