The Planning Inspectorate

Costs Decision

Hearing Held on 12 October 2022
Site visit made on 12 October 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Costs application in relation to Appeal Ref: APP/A2525/W/22/3300517
Land To Rear Of Emmanuel House, Main Road, Holbeach Drove, Spalding PE12 0PS

- 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 George Carman for a full award of costs against South Holland District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for change of use from paddock to residential use for Gypsy and Travellers (retrospective) to include 2 static caravan pitches, and associated touring caravans.

Decision

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

Preliminary Matter

2. The application and the Council's response have been made in writing although both were added to verbally at the hearing.

The submissions for Mr George Carman

3. The appeal is completely unnecessary as the planning application should have been approved. The Council has been unreasonable as it has misinterpreted its own policy 20 from the South East Lincolnshire Local Plan 2019 (the LP). This has led to a refusal of planning permission when on a correct interpretation planning permission should have been granted.

4. LP policy 20 does not limit the referred to "additional needs" to the unknown needs identified in the Boston and South Holland Gypsy and Traveller Accommodation Assessment 2016 (the GTAA), which is how the Council has interpreted the policy. This interpretation is contrary to what LP policy 20 says and guidance at paragraphs 24 d) and e) of the Planning Policy for Traveller Sites document (PPTS).

5. Also, the Council has not maintained an up-to-date understanding of likely accommodation needs as required under PPTS paragraph 7 b). In addition, it has not identified and annually updated a 5 years' supply of specific, deliverable sites as required under PPTS paragraph 10 a). Instead it has held onto the flawed and outdated evidence on need in the GTAA.

6. The Council's misinterpretation of its own policy is not limited to the current application. Council officers' advice led to the appellants withdrawing a previous

application. Also a planning application for 5 pitches on a site elsewhere has been refused on the basis of a claimed lack of need. The Council's misinterpretation is having a wider impact on limiting provision of adequate accommodation for Gypsies and Travellers in South Holland.

7. Gypsies and Travellers are among the most disadvantaged ethnic minority and subject to endemic discrimination. The Council's misreading of its own policy is potentially unlawful as this case relates to Gypsies and Travellers whose ethnicity is a protected characteristic through the Equality Act 2010. The decision is potentially contrary to the Public Sector Equality Duty under s.149 of the Equality Act. The decision is also potentially discriminatory, contrary to s.19 of the Act.

8. At the hearing, the Council's representative has accepted the site is in accordance with LP policy 1. It is common ground that the proposal accords with LP policy 20 and that the occupants moving into the area represents an additional need that may arise. On that basis, the development accords with the development plan and planning permission should have been granted. The Council has acted unreasonably by preventing development that clearly should have been allowed when having regard to the development plan and national planning policy.

The response by South Holland District Council

9. The Council's reason for refusing planning permission is grounded in more complex planning considerations than simply the alleged misinterpretation of LP policy 20. The Council is clear that the proposal largely complies with LP policy 20 but the need for the additional site is also a planning consideration.

10. The Council's case is based upon the need for the development which is a sound planning consideration. Decisions should be made in accordance with the development plan unless material considerations indicate otherwise. The refusal reason was substantiated by the accommodation needs of Gypsies and Travellers, which was carefully assessed and regarded in the LP and the GTAA.

11. The Council's submissions show that when taking into account planning permissions and completions, the need for 13 pitches specified in the GTAA has been met. The GTAA and the information on need is a material planning consideration in the assessment of the appeal development, especially as the Council is governed by a plan led system. As the Council found no identifiable need for the development it was found to be contrary to LP policy 1. It would have been remiss of the Council to have not considered and assessed the GTAA in the planning balance. At no point during the hearing has the Council conceded that the development complies with LP policy 1.

Reasons

12. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and so caused the costs applicant to incur unnecessary expense in the appeal process. The applicant claims the Council has acted unreasonably by preventing development which should clearly be permitted having regard to the development plan, national policy and other material considerations.

13. The Council's refusal reason does not refer to LP policy 20 and at the hearing the Council's representative stated the development does not conflict with the

policy. Also, through the statement of common ground the Council accepts the development is consistent with the criteria set out in LP policy 20. My appeal decision explains that I find no reason to disagree with the Council in these regards. As such, I do not agree with the applicant that the Council has misinterpreted LP policy 20.

14. Instead, the Council's case relies upon LP policy 1. At the hearing, the Council's representative maintained the objection to the development on the grounds of conflict with this policy.

15. My appeal decision explains why I disagree with the Council and why I find the development would accord with LP policy 1. However, the Council's case is not unreasonable. Through the GTAA and evidence on planning permissions, it has provided information on the need for pitches and on supply. Also, it has provided figures to demonstrate the current position against the 5 year supply requirement as set out in the PPTS. As such, it has substantiated its position on the need for the development.

16. There is no explicit requirement in LP policy 1 or 20 to consider the existing level of Gypsy and Traveller site provision or the need for sites. However, despite my views on the matter, it is not unreasonable for the Council to have regard to such issues in considering the appeal development against LP policy 1 and whether there is a need for it to be located in the countryside. In arriving at this view, I have regard to paragraph 24 a) of the PPTS which states that authorities should consider the existing level of provision and need for sites when assessing applications for Gypsy and Traveller sites.

17. It is clear from the Council officer's report on the planning application leading to the appeal that the development has been assessed against the criteria in LP policy 20. As such, the Council has met the terms of paragraph 24 d) of the PPTS. Also, the Council has determined the application and so it has complied with PPTS paragraph 24 e). Criticisms over the age and certain aspects of the GTAA have been noted and taken into account. However, as the only assessment on the need for Gypsy and Traveller pitches in the district, it is fair for the Council to have regard to its findings. The weight to be attributed to the GTAA is a matter of planning judgement and so the Council's reliance on the document is not unreasonable

18. The Council officer's report on the planning application refers to the Public Sector Equality Duty under s. 149 of the Equality Act 2010. This suggests the Council has had due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.

19. For the above reasons, I find that the Council has not delayed a development that clearly should have been granted planning permission, despite my conclusion that the appeal should be allowed. Therefore, I conclude that the costs application fails to demonstrate unreasonable behaviour by the Council, as described in the PPG. Therefore an award of costs is not justified.

Jonathan Edwards

INSPECTOR