The Planning Inspectorate

Costs Decision

Hearing Held on 28 January 2020

Site visit made on 27 & 28 January 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 February 2020

Costs application in relation to Appeal Ref: APP/Z3825/W/18/3198550 Land to the rear of Pear Tree Farm, Furners Lane, Woodmancote, West Sussex

- 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 Corfield for a full award of costs against Horsham District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a settled gypsy accommodation site comprising 3 pitches and associated utility buildings.

Decision

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

The submissions for Mr George Corfield

2. In the written costs submission, the appellant argues that the Council failed to undertake a planning balance exercise and in consequence prevented and delayed development which should clearly be permitted. The Council also failed to act consistently with regard to the same considerations that would have been applicable to their own traveller site at Cousins Copse.

3. In addition, it is maintained that the Council acted unreasonably and inconsistently by making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis contrary to both national guidance and their own adopted policies.

4. At the Hearing the appellant added to those points by contending that not only had the Council frustrated the development which was entirely consistent with the development plan, but it also failed to apply the tilted balance. It further failed to justify its decision particularly in the absence of any Members of the Planning Committee attending the Hearing to justify it. The Council had tried to bring in new issues of safety causing time and delay at the Hearing.

5. The Council's position had been untenable from the start. Members had taken a political decision rather than a planning decision which often

happens when Members are uncomfortable with a decision. It is not a good reason.

The response by Horsham District Council

6. The response was given in writing before the Hearing. No further comments were added at the event.

7. Cousins Copse is a long-established gypsy site within the district, having been in place in excess of 20 years. As such, any planning decisions would predate current local and national policies to be irrelevant to this appeal.

8. Other Appeal Decisions offered by the appellant for comparison purposes are located outside the district and therefore subject to different local planning policies along with different identified housing needs.

9. The Council collated and produced data on the approach it had taken in determining other applications for gypsy and traveller with a view to demonstrating that it had been consistent in its approach. Of the four Appeal decisions returned in October and November 2018 which all involved sections on sustainability, the Council highlighted that only one of those appeals was allowed with the Inspector finding the site to have reasonable accessibility. In the other three appeals, the identified shortfall in gypsy, traveller and travelling showpeople sites within the district were found to attract significant weight by the Inspectors.

10. Following these Appeal Decisions, the Council has reviewed its stance on applying the tilted balance as prescribed in the National Planning Policy Framework ('the Framework'). The unmet need for gypsy and traveller sites is a significant planning consideration which must be balanced against any conflict with the development plan. The Council considers its reason for refusal was not inconsistent with decisions made on comparable cases at the time.

11. The referral to the Planning Committee was made because of the number of representations contrary to the Officer recommendation of approval.

12. The appellant had opportunity to attend and speak at the Committee meeting. The Planning Officer's role was to advise the Committee which could attach different weight to the planning merits to reach its own conclusions. A clear and robust reason for refusal was given with the proposal considered to conflict with local planning policy.

Reasons

13. Irrespective of the outcome of the appeal, costs may only be awarded where a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process, as set out in Paragraph 030 of the *Appeals* section of the national Planning Practice Guidance ('PPG').

14. The Planning Committee was not bound to accept the Officer's recommendation to grant planning permission, but its reasons for refusal and how it arrived at its decision must have been reasonable with proper regard to both local and national policies.

15. In refusing the application the Council's Planning Committee considered the distance of 850m to the nearest village was walkable. It also acknowledged that the village centre provides public transport links, services and facilities sufficient to meet the needs of prospective occupants of the appeal site. Its concern arose over the only means of access being via Furners Lane which is a private single-track lane. There was a large body of local opposition and a recurring theme was the suitability of Furners Lane for more vehicular traffic.

16. The unlit lane is quite narrow with no footway and few passing places. It is regularly used by vehicular traffic with numerous properties served by the lane. In the circumstances, the Committee considered that occupants of the three proposed gypsy and traveller pitches would most likely rely on the private vehicle to access essential services and public transport.

17. That conclusion made a presumption that was difficult to defend when Furners Lane is a recorded public footpath which is in regular use by pedestrians, including local residents. It is also described by residents as regularly used by cyclists and horse-riders associated with the properties and stables along the lane. Those comments were made in objection to the increased impact of vehicular traffic, but they nevertheless provided clear evidence from those with local knowledge of the type and level of use to which the lane is put.

18. In the circumstances it is difficult to see how the Committee could reasonably have concluded that the appeal site is in an unsustainable location. It quite clearly is not remote from services, facilities and public transport when they are within reasonably easy walking distance along a private lane used regularly by such means. In addition, Furners Lane has provided suitable access for housing and farm traffic which should have provided a clear steer that the lane was capable of accommodating the limited traffic that would be generated by the proposal. There was no objection from the local highway authority.

19. Instead a strained approach was taken to the application of its own policies. If Members had taken the Officers advice, the only reasonable conclusion was that the proposal complied with the Council's development plan and its policies on gypsy and traveller provision in particular.

20. The Council acknowledges that it cannot demonstrate a 5-year supply of specific deliverable sites for gypsy and travellers as required by Planning Policy for Traveller Sites ('PPTS'). When the Committee made its decision, it was Paragraph 14 of the previous 2012 version of the Framework which provided for the tilted balance in circumstances where relevant policies are out-of-date. It included, by reference to Paragraph 49, that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable sites.

21. As quoted in the Appeal Decisions[1] produced by the appellant, the judgment in *Mark Wenman v SSCLG*[2] found that Paragraph 49 was only triggered by a failure to demonstrate the supply of housing on sites other than pitches on

[1] APP/Q3115/W/16/3156409, APP/Q3115/W/18/3205628 dated 13 January 2020
[2] [2015] EWHC 925 (Admin)

travellers sites. The Government's subsequent Written Ministerial Statement of 22 July 2015 confirmed that the lack of a five year supply of deliverable traveller sites should be considered in accordance with the PPTS. The current Framework makes clear that a five year supply of deliverable sites for travellers should be assessed separately in line with the PPTS.

22. Therefore, the lack of a five-year supply of traveller sites would not have triggered the tilted balance. Under Paragraph 11 of the latest Framework it is necessary to establish if the most important policies for determining the application are out-of-date. If so, the tilted balance applies. However, neither Paragraph 11 nor the judgment in *Wavendon Properties Ltd v SSHCLG & Milton Keynes Council* which establishes the approach were issued at the time of the Committee decision.

23. By section 38(6) of the Planning and Compulsory Purchase Act 2004 the proposal had to be determined in accordance with the development plan unless material considerations indicated otherwise. Having found the proposal to be contrary to its development plan, the Committee should have considered whether there were materials considerations to outweigh that conflict. The Officers report contained a section under the heading of 'Conclusions and Planning Balance' which identified the lack of a five-year supply of sites. Members would have been aware of this, but there is no record that it applied any form of balance or considered whether a temporary grant of permission was appropriate.

24. Notably, paragraph 27 of the PPTS provides that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission.

25. In addition, the sustainability of gypsy and travellers sites is not confined to the accessibility of the location. Other factors to be considered are set out within paragraph 13 of the PPTS. These included matters such as promoting access to health services and ensuring that children can attend school on a regular basis. Both health services and a primary school are not far away in Henfield which prospective occupants would potentially be able to benefit from. In construing sustainability narrowly, the Council failed to take into account other relevant factors pertinent to the provision of gypsy and traveller sites.

26. Furthermore, the Council has an acknowledged shortfall in the supply of gypsy and traveller sites to which the proposal would contribute three pitches warranting significant weight to be attached. There were also agreed benefits in economic terms from the use that occupants would contribute from the use of local services and facilities. This is in circumstances where the extra vehicular traffic generated from the use of three pitches would not be significant and trips to reach the village centre would be short.

27. Had all these factors been given appropriate consideration and a balancing exercise undertaken then there could well have been a different outcome.

28. A member of the public who attended the Committee meeting said that the Chairman read out the wording of the balancing exercise required under

Paragraph 14 of the previous Framework. This provided that where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. However, this differs from the planning balance which forms part of the statutory duty under section 38(6) to consider and weigh up any tensions with policies in the development plan before reaching an overall conclusion.

29. The Council has maintained its stance since and argued that the tilted balance as now set out within Paragraph 11 of the latest Framework is not triggered as its most relevant policies are broadly consistent with the Framework. It has not been necessary for me to address this point in my Appeal Decision and it does not assist the Council in defending this application. Even if the Council is right, it did not negate the need to consider other relevant matters including those found in national policy and undertake a planning balance.

30. There is no requirement for any Member to attend a Hearing when a decision is taken contrary to Officer recommendation. In this case, it may have helped to explain the reasons and what was taken into account. As it was, the Council Officer was left in the unenviable position of trying to defend a decision which simply did not stack up and which was taken at a Committee meeting she did not attend.

31. When new safety issues were raised and the appellant's agent objected, the Officer promptly confirmed it was not a safety argument but one of convenience. Having corrected the position at the earliest opportunity, I find no unreasonableness resulting in unnecessary expense in this regard.

32. My attention has been drawn to previous cases including appeals. None of these are particularly insightful when each and every case will differ including proximity to services. The Council's analysis of previous cases does not provide full details. It illustrates consistency in refusing applications on sustainability grounds, but no more.

33. Where costs were awarded in the Little Boarden Farm case[3], it followed a refusal of planning permission for an appeal site that was proposed for allocation as a site for gypsy and traveller development. That is not the position here. The Woodley Farm costs decision[4] was similarly in circumstances where the Inspector had found the appeal site would be accessible to local services. This was in another area and the Council concerned had also changed its position regarding the appellant's gypsy status. There were procedural issues also which led to the award. Neither decision influences my findings.

34. In this particular case it is clear to me that the appeal could and should have been avoided if policy had been applied correctly as advised by Officers, or if Members, having reached a contrary view, had taken appropriate account of the other key considerations which weighed in the planning balance.

[3] Appeal ref: APP/U2235/W/17/3168396 dated 16 October 2017
[4] Appeal ref: APP/L1765/W/15/3131614 dated 5 December 2016

35. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

36. 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 Horsham District Council shall pay to Mr George Corfield, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

37. The applicant is now invited to submit to Horsham District Council 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.

KR Saward

INSPECTOR