



Costs Decision

Inquiry held on 8-10 September 2009

Site visit made on 16 September 2009

by **Bridget M Campbell BA(Hons) MRTPI**

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

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Decision date:
22 October 2009

Costs application in relation to Appeal Refs: APP/U2805/C/09/2097945 and APP/U2805/A/09/2099292

Land at Ashley Road, Middleton, Market Harborough, LE16 8YP

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mrs L Purcell for a full award of costs against Corby Borough Council.
- The inquiry was in connection with appeals against (1) an enforcement notice alleging a change of use of the land from a grass paddock used for grazing horses to land for the stationing of caravans and (2) against the Council's refusal of planning permission for a change of use for the stationing of caravans for 3 no. gypsy plots with utility/day rooms and hard-standing ancillary to that use and including retention of the existing use of the land for stabling horses.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Mrs Purcell

1. The costs application for a full award was submitted in writing. In brief, a full award of costs is applied for on the basis that the refusal of planning permission and the issue of a subsequent enforcement notice was unreasonable. In the alternative, an application for a partial award is made on the basis that a number of the reasons for refusal and for issuing the notice were unsubstantiated, that policy was incorrectly interpreted, and that the submission of late evidence prolonged the inquiry.
2. Additional oral points made include
 - There is no guarantee that if pre-application discussions had taken place the outcome would have been any different.
 - It is the manner in which the policies of the CSS were interpreted rather than the fact that they were relied upon which is criticised together with the failure to balance that against other material considerations.
 - The Council's approach to the sewage treatment works is to apply a blanket ban within a cordon sanitaire with no statistical support.
 - It is not unreasonable to submit rebuttal evidence but it should have been submitted in time to be read beforehand and it is not accepted that its production shortened the inquiry.
 - With no enforcement report available there is no evidence as to what was taken into account when a decision was made to take action.
 - The delegated report on the planning application makes no reference to the personal circumstances of the occupiers and neither does the Council's evidence to the inquiry so it would be logical to conclude that they were not taken into account.

The Response for the Council

3. It is common ground that the Appellant bought and moved onto the appeal site without any consultation or prior discussion with the local planning authority and before planning permission was applied for, contrary to government advice in C01/2006. That was unreasonable behaviour on her part. Had the advice of the Circular been heeded then the appeals might have been avoided but the Appellant's agent said the advice had been deliberately ignored. In addition, the occupiers had been told of the ability to apply for pitches on the Dunlop Close site but had chosen not to do so.
4. The Council considers the site fundamentally unsuitable for the use for the reasons given and contrary to adopted planning policies including those in the recently adopted Core Spatial Strategy (CSS). It is astonishing that it was suggested that such up to date policy should not be taken into account. Adopted Development Plan policies must be applied and then the matter as to whether other material considerations outweigh any breach can be considered. A costs application cannot succeed unless it can be shown that the reasons for refusal were defective and unsupported such that the inquiry should not have taken place.
5. In relation to the proximity to the sewage treatment works, the Council was entitled to rely on the representations from Anglian Water, a statutory undertaker, and those from the Environmental Protection Officer both of whom are professionally qualified to come to a determination on that matter. The Appellant's planning witness is not an expert nor professionally qualified in this field and there was no evidence to weigh against the professional advice given.
6. Criticisms about the other reasons for refusal rely on the way policy has been interpreted rather than on a lack of evidence. Circular 01/2006 predates the up to date policies of the CSS and it is not the case, as implied, that one need only consider government advice in that Circular. The starting point is the Development Plan.
7. The late evidence comprising rebuttal proofs saved inquiry time rather than adding to it. One need only compare the 40-45 minutes in chief taken by the Council's witnesses as opposed to the 5 hours taken in chief with the Appellant's witness to see how they saved time. They dealt with matters arising from the Appellant's submitted evidence that would otherwise have had to have been dealt with in chief.
8. With regard to specific criticisms about unreasonable behaviour, paragraph 44 of C01/2006 is predicated on there being a clear and immediate need. The Council's position is that there is no such need but nevertheless the Council did take into account all the matters as set out in the Circular. In respect of there being no enforcement report, the Council's enforcement officer made clear in cross examination that all relevant considerations were taken into account when a decision was made to take enforcement action. The planning officer also dealt with the planning application in the correct manner, including taking into account the Countywide Traveller Unit (CTU) report setting out the occupiers' circumstances and undertaking a balancing exercise.
9. Whilst the first enforcement notice might have been issued before CTU visited the site, the current enforcement notice was issued after that visit and all

matters were properly considered before the latter notice was issued. A temporary planning permission would have been as equally unsuitable as a permanent permission.

10. There has been no unreasonable behaviour on the part of the Council resulting in the Appellant incurring wasted expense.

Conclusions

11. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
12. It is right to say that the starting point in the assessment of development proposals is the relevant provisions of the Development Plan. In this case the most up to date policy addressing the provision of gypsy and traveller sites is policy 17 of the CSS. As that post dates C01/2006, it must have been prepared taking into account central government advice contained in that Circular. I find it astonishing, therefore, that the Council should have sought to apply the policy in a manner wholly inconsistent with the intentions of the Circular to significantly increase the number of gypsy and traveller sites and to promote more private site provision in appropriate locations through the planning system.
13. In assessing the proposal against that policy, the Council's stance was that there was no need for additional sites as the identified need in the GTAA and the RSS requirement would be met. As the policy is predicated on a need being identified, planning permission could not be granted. Such a rigid approach which disregards any other indicators of need would effectively prevent any additional gypsy sites from being found in the Borough – there would be an objection in principle to any further sites. That would do nothing to advance government aims to significantly increase site numbers and would prevent any private site from being found, as the whole of the GTAA/RSS allocation is intended to be on one public site.
14. Going on to consider the 3 locational criteria of the policy, the first relates to locational guidance and in this respect a good deal of reliance was placed on the requirement that new development in the countryside should be strictly controlled (cross reference to CSS policy 9) and that proposals for development in the open countryside will not normally be permitted (saved Local Plan policy P10(E)). Neither excludes all development, and plainly it is relevant to consider what it is that is being proposed. In this respect C01/2006 clearly envisages that gypsy sites will be found in rural areas and the countryside (paras.47-55). During the inquiry, the Council said that sites in rural and semi-rural settings mentioned in the Circular, would be those found in small villages, hamlets or very small pockets of development, and could thus be distinguished from sites in the open countryside. I am aware of no such distinction, nor that any was so intended, and indeed the Council's planning witness agreed that all areas outside defined development boundaries in development plans would be treated as being in the open countryside for planning purposes. In my opinion the Council took an overly restrictive

- approach to planning policy aimed at restricting development in the countryside that was at odds with the intentions of C01/2006.
15. The second criterion of policy 17 prevents gypsy sites within areas designated as environmentally sensitive. The only designation relating to the area within which the appeal site sits is a Special Landscape Area (SLA) and C01/2006 is clear that local landscape designations should not be used, in themselves, to refuse planning permission for gypsy sites. Thus the fact that it is in an SLA cannot equate to environmentally sensitive within the meaning of the policy. The Council sought to suggest that there were other reasons which, when added, would lead to a conclusion that the site is in an environmentally sensitive area. That is not my reading of the policy which requires the area to be "designated" as such. Once again I find the Council's interpretation and application of the policy to be unreasonably restrictive.
 16. The final criterion of policy 17 requires the site to be closely linked to an existing settlement with an adequate range of services and facilities. Again, the Council's view that a distance of some 300m outside of a village is too far to be considered as closely linked would rule out much of the countryside where C01/2006 suggests sites might be found. Moreover whilst Middleton/Cottingham have very limited services, there is a primary school which might have been seen to be a considerable advantage and both villages are served by buses. With Corby offering a full range of services only some 3.5 miles distant, I consider the Council's narrow application of criterion (c) to be at odds with C01/2006 and the wider sustainability considerations contained therein.
 17. Had the Council kept the aims and intentions of the Circular in mind, it seems to me that a more reasonable approach to the application of policy 17 might have been employed rather than one which is likely to effectively prevent any further sites from being found in the Borough. Whilst that would still leave the matter of proximity to the sewage treatment works to be taken into account, the harm arising from that should have been balanced against any other matters weighing in favour of the development. Instead the Council seemed to accept the view of Anglian Water that there should be a blanket ban on all residential development within a 400m radius; an approach which was not rigidly adhered to when the recent housing development in Middleton was approved. There was no relevant reasoned evidence to support the application of the 400m ban in this appeal.
 18. There is no indication in the delegated report that any of the material considerations which might have been weighed in the balance in favour of the development were taken into account. Under the heading of "Need for the Accommodation" for example, the only need discussed is that arising from the GTAA which is said to be satisfied. The report is silent in matters such as the personal circumstances of the occupiers or in discussing the alternatives available to them. There is no enforcement report at all to look at to see what was taken into account before a decision was taken to issue an enforcement notice. It is not sufficient for the Council's witnesses to assert orally that all relevant matters would have been taken into consideration, particularly where the one report that is available includes an assessment which fails to cover all material considerations. No balancing exercise is included and I am not convinced that any was undertaken in an objective and reasonable way.

19. I conclude that in examining this development the Council took an overly restrictive approach to the application of Development Plan policy which was at odds with government policy and that it also failed to weigh all other material considerations in the balance. This is not one of those cases where the correct approach and analysis shows the planning issues to be clearly finely balanced. Had the Council taken a more balanced approach it might at least have considered whether temporary planning permission could have been granted which might have avoided the need for these appeals. It did not do so. The Appellant might not have assisted in her failure to consult the Council prior to purchasing and moving onto the site but that does not make the Council's subsequent actions any more justified or reasonable.
20. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93 has been demonstrated and that a full award of costs is justified.

Formal Decision and Costs Order

21. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Corby Borough Council shall pay to Mrs L Purcell the costs of the appeal proceedings such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned appeals more particularly described in the heading of this decision.
22. The applicant is now invited to submit to Corby 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 Supreme Court Costs Office is enclosed.

Bridget M Campbell

Inspector

Document

- 1 Summary costs application on behalf of the Appellant