



Costs Award

Hearing held and site visit made on 19 September 2017

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 16th October 2017

Costs award in relation to Appeal Ref: APP/U2235/W/17/3168396 Little Boarden Farm, Boarden Lane, Hawkenbury, Kent TN12 0EB

- The award 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 appeal was made by Mr Tony Eastwood against the decision of Maidstone Borough Council.
 - The appeal was against the refusal of planning permission for the permanent stationing of two additional mobile homes.
 - **Summary of award: a full award is made against the Council.**
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Background

1. The above appeal was determined by a decision issued by the Planning Inspectorate on 22 September 2017. The appeal was allowed and planning permission granted for the stationing of two additional mobile homes as proposed.
2. On 25 September, the Inspectorate wrote to the Council, informing them that the Inspector was considering making an award of costs against the Council, on the grounds of unreasonable behaviour. The grounds on which the award was being considered were summarised in a note enclosed with that letter.
3. The Council responded in an email also dated 25 September. In that email the Council states that the decision to refuse permission was taken by a democratic vote, and that members were not obliged to accept the officers' recommendation. I have considered this response, and conclude that an award is justified, for the reasons set out below.

Reasons for the Award

4. The national Planning Practice Guidance (PPG) makes it clear that where there is unreasonable behaviour which causes unnecessary or wasted expense in the appeal process, the party responsible may be at risk of having costs awarded against them. One of the aims of the costs regime is to encourage local authorities to exercise their development management duties properly, refusing permission only where the reasons will stand up to scrutiny on the planning merits of the case¹. Amongst the PPG's examples of unreasonable behaviour² are: preventing or delaying development which should clearly be permitted, having regard to the development plan, national policy, and other material considerations; failing to substantiate reasons for refusal; refusing

¹ PPG 16-028

² PPG 16-047

- permission on a ground capable of being dealt with by conditions; and failing to review their case, as part of an on-going process of sensible case management.
5. In the present case, the Council's Planning Committee refused permission on the grounds of harm to the landscape and character of the countryside, and the unsustainability of the location. That decision was taken in September 2016. However, in February of the same year, the Council had submitted its new draft local plan, the Maidstone Borough Local Plan (MBLP) to the Secretary of State for examination. In that plan, the appeal site at Little Boarden Farm was identified in Policy GT1(5) as a proposed site for gypsy and traveller development, with capacity for two additional pitches. The application which was before the Committee for decision in September 2016 was in accordance with that proposed allocation, and the decision to refuse permission was thus clearly inconsistent with the Council's emerging policy for the site.
 6. At that time, the MBLP had not yet been examined, and did not form part of the statutory development plan. But nevertheless it is clear that, in putting forward the proposed allocation at Little Boarden Farm as part of the draft plan, the Council had accepted the need for the site to be developed for gypsy and traveller purposes, and indeed relied on it as part of the supply which was needed for the Borough as a whole. It is also evident that, in coming to that view, the Council must necessarily have already considered any issues relating to visual impact or sustainability. In this context I note that draft Policy GT1(5) contained requirements as to landscaping and tree retention, but these were matters that could have been secured by conditions.
 7. If the Council's concern was in any way to avoid pre-empting the examination process, that concern could have been expressed as such in the reasons for refusing permission, and in that case, the present appeal could probably have been avoided. But instead the Committee chose to refuse on grounds which clearly conflicted with the Council's own preferred policy for the site. In so doing, they left the applicant, Mr Eastwood, with little choice but to appeal.
 8. The refusal notice made reference to Policy ENV28 of the Maidstone Borough-Wide Local Plan (the MBWLP), which restricts development in the countryside. This was reasonable, because the MBWLP, despite its age, remained the adopted plan. But the Planning Committee was also required to consider all other material considerations, which should have included the emerging draft plan allocation and the Borough's need for gypsy and traveller sites. There is no evidence that they did so, or if they did, that they gave these considerations any significant weight. Certainly there is no record of any such consideration in the Committee minutes. Had proper consideration been given to all the material considerations, it is difficult to see how the Committee could have arrived at its decision to refuse. In the circumstances, that decision was unreasonable.
 9. On 17 July 2017, the Council submitted its appeal statement. The statement incorrectly stated that the site was not allocated in the draft MBLP. It also argued that the Council was able to demonstrate a 5-year supply of pitches, but failed to acknowledge that this relied on the inclusion of the appeal site and other draft plan allocations. The final planning balance failed to give any weight at all to the emerging Policy GT1(5). The Council's case was thus wholly unconvincing.

10. Later in July, the Examining Inspector issued his report on the Local Plan. He found no need for any changes affecting the present appeal proposal. This meant that draft Policy GT1(5) had now reached the final stage before adoption, and should be given weight accordingly. At this stage it should have been obvious to the Council that its refusal of permission could not be substantiated, even if their evidence had not contained the obvious errors and flaws that it did. Had the Council reviewed its position on the appeal, it would have had the opportunity to withdraw its case. That would not necessarily have averted the need for the hearing to take place, but could have considerably shortened it, and possibly avoided the need for the appellant to be professionally represented. In failing to conduct any such case management, the Council again acted unreasonably.
11. I fully accept that the Planning Committee was entitled to disagree with officers' advice, but this does not change the fact that decision-makers must have due regard for all the relevant material considerations, in order to be able to substantiate their reasoning when called on to do so. The provisions of a draft local plan at the examination stage, or later, and the need for gypsy and traveller sites in the area, were clearly relevant in this case. All the evidence suggests that they were given such little weight as to make the decision unreasonable.
12. In the circumstances, I conclude that the Council's unreasonable behaviour, from the date of its decision onwards, caused Mr Eastwood the unnecessary and wasted expense of the appeal. He is therefore entitled to recover his costs, and accordingly a full award should be made.

Costs Order

13. 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 Maidstone Borough Council shall pay to Mr Tony Eastwood the costs of the appeal proceedings described above.
14. Mr Eastwood is now invited to submit to Maidstone Borough Council, to whom a copy of this award 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, an application for a detailed assessment may be made to the Senior Courts Costs Office. A guidance note on how to make such an application is enclosed.

John Felgate

INSPECTOR