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## Costs Decisions

Inquiry Held on 26-29 September 2023; 21-23 and 28 November 2023

Site visits made on 26 September 2023 and 23 November 2023

**by R Merrett Bsc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 April 2024

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### **Costs application 1 in relation to:**

**Notice 1: Appeal Refs: APP/L1765/C/22/3296767, 3296771, 3296773, 3296776, 3296778, 3296781, 3296783**

**Notice 2: Appeal Refs: APP/L1765/C/22/3296768, 3296772, 3296774, 3296777, 3296779, 3296782, 3296784**

**Notice 3: Appeal Refs: APP/L1765/C/22/3296503, 3296504**

**Land at Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire SO21 3BW**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Winchester City Council for a partial award of costs against the various appellants listed in Appendix 1 to this decision.
  - The inquiry was in connection with appeals against enforcement notices alleging:  
Notice 1: Without planning permission the material change of use of the Land to a residential caravan site, including the stationing of approximately 100 caravans for residential use; Notice 2: Without planning permission, the breach of conditions 10, 11 and 15 of planning permission 02/01022/FUL granted on 02 October 2003; Notice 3: Without planning permission the material change of use of the Land to a residential caravan site for 10 caravans.
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### **Costs application 2 in relation to:**

**Notice 1: Appeal Refs: APP/L1765/C/22/3296767, 3296771, 3296773, 3296776, 3296778, 3296781, 3296783**

**Notice 2: Appeal Refs: APP/L1765/C/22/3296768, 3296772, 3296774, 3296777, 3296779, 3296782, 3296784**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by the various appellants listed in Appendix 1 to this decision for a full award of costs against Winchester City Council.
  - The inquiry was in connection with appeals against an enforcement notice alleging:  
Notice 1: Without planning permission the material change of use of the Land to a residential caravan site, including the stationing of approximately 100 caravans for residential use; Notice 2: Without planning permission, the breach of conditions 10, 11 and 15 of planning permission 02/01022/FUL granted on 02 October 2003.
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## **Costs Application 1**

### **Decision**

1. The application for a partial award of costs is approved in the terms set out below.

## Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)<sup>1</sup> advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Council's case is that the appellants, in relation to the ground (a) appeals i) failed to respond to Planning Contravention Notices, which had they done so would have foreshortened the appeal process considerably and ii) only belatedly clarified the scope of the deemed planning application, by confining the proposal to Gypsies and Travellers, having previously indicated that general residential occupation of the site had been sought.
4. It is also claimed that that the appellants advanced appeals on legal grounds which have not been substantiated and had no reasonable prospect of succeeding.
5. For the avoidance of doubt, the Council confirmed that it did not make an application for costs specifically regarding the withdrawal of appeals in relation to Notices 2 and 3 following the Inquiry.

### *The ground (a) appeals*

6. In respect of the ground (a) appeals it is undisputed that the appellants failed to complete and return planning contravention notices. Whilst this is not condoned, I am not persuaded that the need for evidence to be heard at the Inquiry as to the personal circumstances of the various site occupiers who were in attendance would otherwise have been avoided. Furthermore, I have accepted as part of the main decision that the service of Notice 1 was effective, and that various site occupiers have been comprehensively represented during the proceedings. As such, any argument that the failure to complete planning contravention notices led to certain persons not being identified is not compelling.
7. As to clarification over the scope of the deemed planning application, I acknowledge the position was complicated by the original participation of different agents, before a single agent took over responsibility for the case as a whole. I also acknowledge that the Statement of Case in relation to Notice 3 and the appellants' proof of evidence indicated that planning permission for Gypsy and Travellers was sought.
8. However, the respective appeal forms and combined statement of case<sup>2</sup> in relation to Notice 1 and Notice 2 referred to residential need more widely, including households requiring affordable housing in the context of the lack of a five-year housing land supply. By the time the appellants' 'confined' case was known to the Council, as summarised above, it had already spent time explaining in its own statement of case and proofs of evidence<sup>3</sup> why Carousel Park was not an appropriate location for general residential occupation. Thus, whilst I accept that no Inquiry time was spent on conventional or affordable housing issues, the failure of the appellants to clarify their position in this

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<sup>1</sup> Reference ID: 16-030-20140306

<sup>2</sup> Prepared by Green Planning Studio Limited - GPS Reference 09\_313A

<sup>3</sup> See proofs of evidence of S. Opacic and T. Wicks.

regard at an earlier stage was nevertheless unreasonable and did lead to a degree of wasted expense.

*The ground (e) appeals*

9. I turn to the legal grounds of appeal. In respect of the ground (e) appeals, notwithstanding my finding that Notice 1 had been adequately served, a number of site occupiers did not appeal and from the evidence given I cannot reasonably rule out that there were site residents and owners who did not physically come into possession of a copy of Notices 1 and 2. In this context I am unable to conclude that the ground (e) appeals went so far as to be unreasonable.

*The ground (b) appeals*

10. With regard to the ground (b) appeal, I concluded that it was not wrong for the notice to span multiple planning units, when taking into account the alleged material change of use applied to each unit targeted. Similarly, I am not persuaded that it was wrong for the alleged breaches of condition enforcement notice to cover multiple planning units. However, it is not uncommon for enforcement notices to focus on individual planning units and I do not consider that to argue for such in this case went so far as being unreasonable.
11. As to the appellants' point refuting that the processing of waste had occurred on the site, which in any event would be a County matter, whilst this was potentially misleading, I am satisfied that it arose from a legitimate response to the Council's reference to waste processing in its own statement of case<sup>4</sup>. Furthermore, very little Inquiry time was wasted in relation to this specific matter and thus I do not find it amounted to unreasonable behaviour.

*The ground (c) appeals*

12. The appeal on ground (c) was that the matters alleged do not constitute a breach of planning control. The appellants' argument in relation to Notice 2 was confined to the point that walls, fences or other means of enclosure erected on the site benefit from permitted development rights provided by Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). There is no condition imposed on any previous grant of planning permission, which expressly removes these rights.
13. The notice alleges the breach of planning conditions, including condition No 11, which is concerned with restricting the number of family pitches on the site to nine in total, and prohibiting the sub-division of those pitches. It is undisputed that many of the original family pitches have been subdivided, which has resulted in many more pitches than the nine originally permitted. Thus condition 11 of the 2003 consent is breached.
14. However, from the information before me I am not persuaded that the availability of permitted development rights in respect of the erection of walls and fences, does not at least constitute a reasonable defence to the appellants' actions in sub-dividing pitches. For this reason I am not persuaded that it was unreasonable to raise the ground (c) appeal on this basis.

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<sup>4</sup> See paragraph no. 124.

### *The ground (d) appeals*

15. With regard to the ground (d) appeals, the appellants refer to the presence of various operational developments on the site which had been in place for in excess of 10 years prior to the service of the notices. However, Notice 1 did not allege operational development, rather a material change of use. It required removal of various structures, including operational development, that was associated with the unauthorised use, and therefore not with any previously authorised use.
16. The appellants were professionally represented and provided no substantial evidence to support a case that the alleged use had become immune from enforcement through the passage of time. I consider that this amounted to unreasonable behaviour. I am mindful that very little time was wasted in the Inquiry, with regard to this specific matter, however the Council did need to cover the issue within its statement of case and proofs of evidence<sup>5</sup>. This therefore adds to the wasted expense referred to above and to the justification for a partial award of costs.
17. Notice 2 alleged breach of conditions, including condition 11 which sought to prevent sub-division of pitches. In this specific context I do not find the appellants' arguments regarding historic operational developments on the site, including walls and fences, to be unreasonable. This is irrespective of the merits of such arguments, which I was not required to consider.
18. As to conditions 10 and 15, the appellants did not produce any substantive evidence to support their ground (d) appeal, although equally neither did the Council do so pursuant to resisting this specific element. I therefore find that with regard to the ground (d) appeals, the appellants' unreasonable behaviour, causing wasted expense, is limited to Notice 1 related representations.

### *The ground (f) appeals*

19. Appeals on ground (f) were made in relation to each of the appealed notices. However, in light of my decision in relation to Notice 1 it was unnecessary for me to consider these appeals. Whilst I appreciate the Council's position regarding the ground (f) appeals, it has not set out clearly why it considers the appellants' stance in this regard to have been unreasonable, resulting in wasted expense. This element of the costs application does not therefore merit adding to the partial award.

### **Costs Order**

20. 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 the persons named in Appendix 1 to this decision, as the appellants in relation to Notice 1 and Notice 2, shall pay to Winchester City Council, the costs of the appeal proceedings, **limited to those costs incurred in relation to resisting the use of the site as a caravan site for general residential occupation in the context of the ground (a) appeals (including affordable housing and housing land supply matters) and the need to defend the ground (d) appeals specifically in relation to Notice 1;** such

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<sup>5</sup> See proofs of evidence of Tom Wicks.

costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned appeals more particularly described in the heading of this decision.

21. The applicant is now invited to submit to persons so named in Appendix 1 to this decision, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

## **Costs Application 2**

### **Decision**

22. The application for a full award of costs is refused.

### **Reasons**

23. The appellants' application was made only on the proviso that any of the appeals succeeded under ground (e). Appeals on ground (e) were made in relation to Notices 1 and 2. However the ground (e) appeals did not succeed in relation to Notice 1.
24. Furthermore, all appeals in relation to Notice 2 were withdrawn. However, I place on record that even if I had found that copies of that notice had not been served as required by the Act, there is nothing in the evidence I have heard to suggest any unreasonable behaviour on the part of the Council.

*R Merrett*

INSPECTOR

## Appendix 1

### List of those who appealed against Notice 1:

1	Freddie Loveridge	Appeal A	APP/L1765/C/22/3296767
2	Anthony O' Donnell	Appeal B	APP/L1765/C/22/3296771
3	Patrick Flynn	Appeal C	APP/L1765/C/22/3296773
4	Hughie Stokes	Appeal D	APP/L1765/C/22/3296776
5	Danny Carter	Appeal E	APP/L1765/C/22/3296778
6	Patrick Stokes	Appeal F	APP/L1765/C/22/3296781
7	Oliver Crumlish	Appeal G	APP/L1765/C/22/3296783

### List of those who appealed against Notice 2:

1	Freddie Loveridge	Appeal H	APP/L1765/C/22/3296768
2	Anthony O' Donnell	Appeal I	APP/L1765/C/22/3296772
3	Patrick Flynn	Appeal J	APP/L1765/C/22/3296774
4	Hughie Stokes	Appeal K	APP/L1765/C/22/3296777
5	Danny Carter	Appeal L	APP/L1765/C/22/3296779
6	Patrick Stokes	Appeal M	APP/L1765/C/22/3296782
7	Oliver Crumlish	Appeal N	APP/L1765/C/22/3296784

### List of those who appealed against Notice 3:

1	Patrick Stokes	Appeal O	APP/L1765/C/22/3296503
2	Bernie Stokes	Appeal P	APP/L1765/C/22/3296504