

Costs Decision

Site visit made on 14 July 2016

By Lynne Evans BA MA MRTPI MRICS

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

Decision date: 21 September 2016

Costs application in relation to Appeal Ref: APP/P1425/W/16/3143965 High Elms Filling Station, Brighton Road, Lewes BN7 3JR

- 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 Pricewatch Limited for an award of costs against Lewes District Council.
 - The appeal was made against the grant of permission to decommission 6 single skin underground fuel tanks totalling 130kL capacity, replace with 4 above ground double skin bunded fuel tanks totalling 62kL capacity, subject to conditions which are in dispute (Conditions 1, 2, 3, 5 and 6).
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Decision

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

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. In seeking a full award of costs, the Appellant contends that the Council has acted unreasonably both in terms of procedural and substantive matters.
 4. I deal first with the contentions by the Appellant that the Council demonstrated procedural unreasonableness. Whilst I recognise that the Environment Agency's representations were received after the requested date for such representations, and this was regrettable, I agree with the Council that it was entitled to and it was proper to take the representations into account, both because of the nature of the proposals and issues raised and because these representations were received prior to determination of the application.
 5. I also agree that the Council was under no obligation to inform the Appellant of the receipt of these or any other representations received, or indeed of the planning conditions it intended to impose. It is for the local planning authority to determine an application and where it intends to grant permission to impose such conditions as it considers reasonable and necessary in accordance with paragraph 206 of the Framework.
 6. From the information before me there is no evidence that the Council has revoked the permission granted; the Council has argued that it considers the
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permission to be invalid because of the actions of the Appellant; this is an entirely different matter. This has not, in my view affected the appeal process. Given the sequence of events following the permission, I also do not consider that the Council acted unreasonably in writing to the Appellant to request the submission of a retrospective application. Again, this has not, in my view, affected the appeal process.

7. I agree that there was an error in the way that the Council referenced the appeal, by referring to a refusal of planning permission rather than an appeal against conditions imposed on a grant of planning permission. However, there is no evidence before me to suggest that this affected the appeal proceedings in any way that was or would have been detrimental to the Appellant's position.
8. The Appellant has made various references to meetings with the Environment Agency and that the Environment Agency has accepted that the conditions imposed were flawed. However, there is no written evidence before me of these assertions. The Appellant has also referred to the time taken for the Council and the Environment Agency to respond to further material submitted but those matters are outside the remit of this appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary expense as a result of procedural unreasonableness has not been demonstrated.
10. In terms of the substantive matters relating to the actual conditions imposed, I have not agreed with each and every point raised by the Appellant, including in relation to the extent of development involved in relation to the scheme proposals.
11. I have also found that the objectives and requirements of the conditions in so far as they seek to control any pollution or contamination from the permitted development within this environmentally sensitive site are relevant to planning and necessary to accord with the requirements of the National Planning Policy Framework.
12. However, I have agreed with the Appellant that the wording of the conditions which have been appealed are defective; they do not reflect best practice and the clear guidance set out in the Planning Practice Guidance. This extends to include those conditions which, as originally imposed, are ambiguous in their content or appear to seek to remedy a pre-existing problem not directly created by or related to the proposed development. I have concluded that each of the conditions which the Appellant has appealed are defective and require to be revised in their wording. To the extent that the conditions are defective in their wording and this has necessitated the appeal being pursued, I find that unreasonable behaviour has been demonstrated.
13. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified. This is restricted to the time and effort expended by the Appellant in pursuing the appeal against the wording of the conditions, in so far as the imposed conditions have not met the tests set out under the Framework and under the Planning Practice Guidance.

Costs Order

14. 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 Lewes District Council shall pay to Pricewatch Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs relating to the time and effort expended by the Appellant in pursuing the appeal against the detailed wording of the conditions, in so far as the conditions as originally imposed have not met the tests set out under the Framework and under the Planning Practice Guidance.

15. The applicant is now invited to submit to Lewes District 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 Senior Courts Costs Office is enclosed.

L J Evans

INSPECTOR