
Costs Decision

Site visit made on 18 October 2016

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 25 May 2017

Costs application in relation to Appeal Ref: APP/L3245/W/16/3146508 Land at Heath Farm, Hopton Heath, Craven Arms, Shropshire

- 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 MS and JE Mann T/A Bedstone Growers for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for four poultry sheds and feed bins, ancillary works, formation of new vehicular access, erection of biomass building and associated landscaping.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that 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. The PPG makes it clear that parties in planning appeals normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Each party is required to behave reasonably in respect of procedural matters at the appeal and with respect to the substance of the matter under appeal.
 4. The appellants' application for costs is made on both procedural grounds because the Council failed to attend the arranged site visit on the 13 September 2016 which led to it being aborted and rearranged, and substantive grounds which are detailed below.
 5. The appellants consider that it was unreasonable of the Council to refuse the planning application, having previously granted permission for the same development. The information considered by the Council at both Committee meetings was materially the same in both instances, apart from the withdrawal of Natural England's objection to the scheme, which was reported to the October 2015 meeting.
 6. The Council initially granted planning permission for the proposal on 8 May 2015 following the Committee's consideration of the planning application at its meeting on 9 December 2014. The decision to grant permission was subject to
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- an application for judicial review by Clungunford Parish Council. As a result of a procedural error made by the Council in not referring the application back to Committee advising of an outstanding objection to the scheme from Natural England in respect of the River Clun Special Area of Conservation (SAC), the decision was successfully challenged and the decision quashed.
7. The Committee then reconsidered the planning application at its 6 October 2015 meeting. It was reported that Natural England had withdrawn its objection to the effect of the scheme on the SAC. The planning application was recommended for approval by the planning officer; however, the Committee refused planning permission for the proposal.
 8. It is submitted that the reasons for refusal are ill founded and have not been supported by evidence. By refusing the application, the appellants have incurred unnecessary costs in the appeal process. The actions of the Council have led to the delay of development which it had previously found to be acceptable and the Council has failed to determine the same application in a similar manner.
 9. The appellants also submit that the Council's failure to follow the correct processes when it first determined the planning application and subsequent judicial review further delayed the development. They have requested that this matter is considered as part of their application for costs. Whilst noting the appellants' concerns regarding this matter, the PPG is clear that costs incurred that are unrelated to the appeal or other proceedings are ineligible for costs awards. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission. Accordingly, I have not considered this matter further.
 10. Procedurally I find that the Council acted unreasonably in failing to be represented at the first scheduled site visit. No explanation has been provided as to why this occurred. This resulted in the appellants' representatives turning up for a visit that was aborted. This resulted in wasted expense on the appellants' behalf.
 11. In terms of the Council reaching a different decision in October 2015 to that taken in May 2015, it is clear that the Committee took its decision based on a detailed officer report which included consultation responses, and representations made by interested parties and the Parish Council. Having regard to the concerns raised by local tourism businesses, local residents and the Parish Council, it was necessary and reasonable of the Committee to take these into consideration as part of its determination of the application. Whilst the information contained within the officer report was not materially different in October 2015 to that considered in December 2014, it was entirely reasonable for the Committee to consider the planning application afresh. Many months had elapsed between the consideration of the planning application and it is likely that some Councillors may have reached a different conclusion on the acceptability or otherwise of the scheme when they assessed the merits of the case at the October meeting. This does not amount to unreasonable behaviour.
 12. The Council submit that the determination of the application was a finely balanced majority decision both times it was considered. Given the nature of

the scheme and the level of local opposition, I have no reason to doubt that this was the case.

13. I note the Council's suggestion that there had been a change in planning policy when the Council determined the planning application in October 2015. However, whilst the Inspector's report had been received in respect of the Site Allocations and Management of Development Plan (SAMDev Plan), nowhere within the decision notice were the policies of this plan referred to. I am not therefore convinced that the Committee placed more emphasis on the SAMDev policies than they did the Core Strategy policies as suggested by the Council in its rebuttal statement.
14. Planning authorities are not bound to accept the advice of their officers, but if such advice is not followed, authorities will need to show reasonable grounds for taking a contrary decision and produce evidence to substantiate each reason for refusal on appeal.
15. In respect of the first reason for refusal, I am satisfied that whilst sometimes lacking in detail, as set out in my main decision, the Council did produce evidence to substantiate its concerns. Reference was made to policies of the development plan, including those contained within the recently adopted SAMDev Plan; to the landscape character of the area and a survey which highlighted the value tourists placed on the local area. The appellants submit that poultry farms have been allowed elsewhere in the area. However, it is a well-established planning principle that each planning application and appeal must be considered on its individual merits. I am satisfied that the Council adopted this approach.
16. The Council acknowledged the benefits of the scheme on the local economy, however, it found that they did not outweigh the harm that it had identified. This indicates that a balancing exercise was undertaken. It is open to the decision maker to apportion weight to the benefits and harm of a particular scheme. The fact that the Committee apportioned less weight to the economic benefits of the scheme than the planning officer does not demonstrate unreasonable behaviour.
17. In light of the above, I find that the work undertaken by the appellants in defending the first reason for refusal was a necessary part of the appeal process. Unreasonable behaviour has not been demonstrated.
18. However, whilst the Council was entitled to take a different view to its expert advisors in respect of the second reason for refusal, it failed to produce evidence to substantiate its concern that a breakdown in environmental controls would be harmful to the River Clun SAC and River Teme Site of Special Scientific Interest. In this regard it acted unreasonably. The appellants were put to unnecessary expense in defending this aspect of the appeal.
19. I therefore find that in respect of the second reason for refusal, unreasonable behaviour, resulting in unnecessary or wasted expense has been demonstrated.

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

Shropshire Council shall pay to MS and JE Mann T/A Bedstone Growers, the costs of the appeal proceedings limited to those costs incurred in respect of attendance at the aborted site visit and in relation to defending the second reason for refusal relating to the River Clun catchment and the impact of the scheme upon it, 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.

21. The applicants are now invited to submit to Shropshire 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.

R C Kirby

INSPECTOR