
Costs Decisions

Inquiry opened on 23 May 2017

Site visit made on 25 May 2017

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

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

Decision date: 04 July 2017

Costs applications in relation to:

Appeal A - Ref: APP/H3320/W/16/3151392

Appeal B - Ref: APP/H3320/W/16/3151393

J Gliddon & Sons Ltd, 2 Bank Street, Williton, Taunton, TA4 4NH

- The applications are made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by J Gliddon & Sons Ltd for full, or failing that, partial awards of costs against West Somerset Council.
 - In the case of Appeal A, the inquiry was in connection with an appeal against the refusal of planning permission for redevelopment of the site to provide a food store (Class A1), retail shops (Class A1), professional and financial services (Class A2), food and drink uses (Class A3), health services (Class D1), residential dwellings (Class C3), vehicle and pedestrian access, and associated car parking and landscaping.
 - In the case of Appeal B, the inquiry was in connection with an appeal against the refusal of planning permission for the erection of up to 480 sqm gross of flexible Class A1/A2 floorspace linked to the proposed redevelopment of land associated with Application No 3/39/14/010 to include vehicle and pedestrian access and landscaping.
 - The inquiry sat for 3 days on 23 to 25 May 2017.
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Decision

1. For Appeal A, the application for an award of costs is refused. For Appeal B, the application for an award of costs is allowed in the terms set out below.

The submissions for J Gliddon & Sons Ltd

2. The application for costs was submitted in writing and further, brief points were added orally after the Council had made its response.
3. In summary, for Appeal A, a full award is sought, largely on the grounds that the single reason for refusal has not been properly substantiated; that some of the Council's concerns regarding impact on the retail area could have been addressed if it had sought to impose planning conditions; and that there appears to have been a change of stance by the Council's retail witness, from the position he took when initially advising the Council on this application. This has resulted in the appellant having to pursue an unnecessary appeal, with consequent wasted expense.
4. In the alternative, a partial award is sought, largely on the grounds that the adoption of the West Somerset Local Plan (WSLP) to 2032 in November 2016 fatally weakened the Council's case and made its position untenable. Partial costs from November 2016 are therefore sought. Alternatively, partial costs are sought from 6 April 2017, when the appellant informed the Council in writing that it would be prepared to accept a condition requiring the entrance to the proposed supermarket

to be sited within the central retail area. The appellant indicated that if the Council considered this point would resolve its concerns, no application for costs would be made for Appeal A or Appeal B.

5. The grounds for a full award of costs for Appeal B overlap with those for Appeal A as the merits of the appeals have always been seen separately, as well as in combination. Moreover, there has been a clear failure to substantiate the reason for refusal, and it was always inconceivable that an impact case could be defended at appeal. This was made all the more so once the Council granted planning permission for an almost identical proposal in January 2017.
6. In the alternative, a partial award is sought either from the date of the adoption of the WSLP, or from the grant of the near identical scheme referred to above, until the Council formally withdrew its opposition to Appeal B at the time of the signing of the Planning Statement of Common Ground (SOCG) in late April 2017. The appellant has incurred wholly unnecessary costs in prosecuting Appeal B during these periods, and a partial award of costs is justified.

The response by West Somerset Council

7. This was also made in writing. In summary, for Appeal A the Council rejects the assertion that it failed to substantiate its reason for refusal. Expert retail advice was sought and was fed into the Officer's report. This outlined the benefits and disbenefits of the proposal and advised that the weight to be given to various factors was down to the Planning Committee, as decision maker. The reason for refusal was clear, expressing the views of the Planning Committee, and referring to relevant policies. The Council was quite entitled to think that the proposed out-of-centre supermarket could have a significant adverse impact as there was no defined retail centre at that time, and the supermarket was proposed to sit outside the draft retail centre being proposed in the emerging WSLP.
8. The reason for refusal was balanced, and the imposition of conditions would not have addressed the Council's principal concern, that of the impact of the supermarket. The Council's retail witness's evidence has been fair and reasonable throughout. The Council rejects the assertion that its case was fatally weakened on adoption of the WSLP, as the emerging policies had been expressly considered at the time planning permission was refused.
9. The appellant's offer in March 2017 to site the supermarket entrance within the retail area did not fundamentally alter the Council's view that the proposal would have a significant adverse impact. The essential point is whether the proposed development could integrate with the existing centre such that the impact would not be significant adverse. The Council's case is that it could not.
10. Until the appellant presented the unilateral undertaking (UU) on the opening day of the inquiry which confirmed the supermarket entrance would be within the central retail area, and that the other Appeal A units would also be sited in this area, the Council had no certainty that in excess of 3,000 sqm of new floor area would not be delivered outside the defined retail centre.
11. For Appeal B, the proposal was refused planning permission in the policy context of the emerging WSLP, and at that time the Council considered that it would lead to a significant adverse impact on the existing retail area. When the WSLP was adopted, and a near identical proposal was submitted by the appellant, the Council acted properly by granting planning permission. As a result, the Council properly

reconsidered its position and confirmed by the signing of the Planning SOCG in April 2017 that it would no longer defend Appeal B. This would not have prejudiced the appellant, as much of the work relating to Appeal B would, in any event, have also have featured in the inquiry for Appeal A, given the clear overlap. In view of the above points, all 4 costs claims should be rejected.

Reasons

12. The Planning Practice Guidance advises that costs may 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.
13. With regard to the Appeal A scheme, it is the case that the Officer's report to Committee recommended approval, having considered all material factors, including detailed retail advice obtained from Mr Morris of GVA, who also provided the Council's retail evidence at the inquiry. The retail advice from GVA was appended in full to the Committee report, and summarised in the Committee report. It does not provide any firm conclusions, but directs Officers and Members to a number of matters to which they should pay particular regard.
14. Despite the balance undertaken by the Council Officer who wrote the Committee report, Members took a different view and refused planning permission on the grounds that the proposed supermarket would have a significant adverse impact on the vitality and viability of Williton centre, which would be likely to result in store closures and impact upon investment in the centre. The reason for refusal acknowledged that there could be some benefits to the proposal, but considered that these would not outweigh the adverse impact. In coming to this view, Council Members had regard to relevant adopted and emerging policies.
15. From my reading of the submitted evidence I see nothing untoward in the Planning Committee choosing to assess the planning balance in the way it did, and, as such, its decision to refuse planning permission for the aforementioned reason was not unreasonable. Moreover, although the WSLP was subsequently adopted in November 2016 I am not persuaded that this, of itself, rendered the Council's decision unsound, as the proposed supermarket would still be sited outside the defined retail area. Indeed, even following the appellant's written offer in March 2017 to accept a condition requiring the supermarket entrance to be sited within the retail area the Council was still entitled, in my opinion, to treat much of the supermarket – and hence its turnover – as not being within the retail centre.
16. For reasons set out in my appeal decision I do not share the Council's view on this matter, but I do not consider that the Council acted unreasonably in taking the stance it did. I am also satisfied that the evidence put forward to the inquiry by the Council's retail witness had substance, and presented a reasonable alternative interpretation of the available data to that submitted by the appellant. For reasons made clear in my appeal decision, I favour the views and conclusions put forward by the appellant but I am not persuaded that the Council behaved unreasonably in defending its stance on Appeal A at the inquiry.
17. The situation is, however, somewhat different in the case of the Appeal B proposal, which is of a much smaller scale than the Appeal A scheme. Viewed in isolation it is difficult to see how this proposed development could also be considered to have a significant adverse impact on the vitality and viability of Williton centre. But the description of this development makes it clear that it is linked to, and should be viewed in association with, the larger Appeal A proposal. With this in mind, the

reason for refusal does not seem to me to be necessarily unreasonable, especially as no defined retail area existed at the time that planning permission was refused.

18. Indeed, the Council's stance is supported by its Statement of Case, submitted in August 2016. This refers to the Planning Practice Guidance, which explains that a judgement as to whether the consequences of the identified impacts are likely to be significantly adverse, can only be reached in light of local circumstances; and that depending on such circumstances, even very modest trade diversion from a new development may lead to a significant adverse impact.
19. But following the adoption of the WSLP, the Council reconsidered a new proposal for essentially the same Appeal B scheme (albeit without the mini-roundabout access) and granted planning permission on 30 January 2017. Whilst it may have thought that this rendered Appeal B unnecessary, at no time until the signing of the Planning SOCG on 25 April 2017 did the Council notify the appellant that it was not going to defend Appeal B. This amounts to unreasonable behaviour.
20. As a result, any time spent and expense incurred by the appellant working on Appeal B following this grant of planning permission, until the signing of the SOCG has to be considered unnecessary and wasted. That said, once the SOCG had been signed there was no reason for the appellant to incur any further expense solely for Appeal B. Appeal B did form part of the inquiry, but this was largely for the benefit of any interested persons who may have wished to oppose the Appeal B proposals. Because of the general overlap of matters for both appeals, I am not persuaded that any time spent by the appellant at the inquiry dealing with matters arising from Appeal B, can be attributed to unreasonable behaviour on the part of the Council.
21. Drawing all the above points together, I find that no unreasonable behaviour has been demonstrated in the case of Appeal A, but that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in the case of Appeal B. A partial award of costs, covering the period 31 January 2017 to 25 April 2017, is therefore justified.

Costs Order

22. 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 West Somerset Council shall pay to J Gliddon & Sons Ltd, the costs of the appeal proceedings, limited to those costs relating to Appeal B covering the period 31 January 2017 to 25 April 2017; such 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.
23. The applicant is now invited to submit to West Somerset 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.

David Wildsmith

INSPECTOR