



Costs Decision

Site visit made on 27 June 2017

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 27 July 2017

Appeal Ref: APP/A1910/W/17/3171292

499 London Road, Hemel Hempstead HP3 9BG

- 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 Mr Shamir Budhdeo for a full award of costs against Dacorum Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for demolition of existing retail showroom, workshop and associated facilities and construction of offices with retail and lobby areas, cafeteria and integrated basement parking (all matters reserved).
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Decision

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

Procedural Matter

2. For clarity and brevity I have used the description of development given on the decision notice in the heading above.

Reasons

3. The national Planning Practice Guidance (PPG) 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.
4. The appellant applied for outline permission for the redevelopment of a commercial site on the outskirts of Hemel Hempstead comprising office accommodation, parking and a food retail outlet. The Council refused permission for two reasons, namely that insufficient evidence was provided in respect of the effect of the retail outlet on the vitality and viability of the town centre, and the effect of the development on the safe and efficient operation of the highway network.
5. The appellant argues that the scope of the Transport Assessment¹ submitted to support the application was agreed in advance with the Council. However, although the design and access statement names the national food retailers who the appellant hoped would take over the retail outlet, the trip generation modelling used for the Transport Assessment was based on non-food retail data. The transport consultant suggested this was an error, but as reasoned in my decision, I concluded that the development included a food store.

¹ Vectio Consulting, December 2016

Consequently, I concluded that the transport assessment provided with the application did not adequately assess the full effect of the development on the local highway network.

6. The appellant also argues that the concerns of Hertfordshire County Council (HCC) were not relayed to the appellant or the consultant in advance of the decision notice, and that HCC took 79 days to provide a response to the Council. However, the date of validation is not necessarily the date upon which statutory consultees are notified.
7. Furthermore, HCC contacted the transport consultant on 9 December 2017 to query inconsistencies in the report, noting that the trip generation modelling used the profile of a different planning application². The consultant forwarded an updated report to a dropbox on 22 December 2017³. The Council was unable to access the document and a CD was submitted in the New Year⁴. The PPG states that where there is more than one document, the 21 day period begins on the day on which the last document is received. As such, it does not seem unreasonable that HCC's response to the updated transport assessment was not issued until 27 January 2017, some 10 days before the decision notice.
8. The correspondence indicates that there was a willingness to resolve outstanding issues in respect of the transport assessment, and in the context of the ongoing dialogue between the parties during the determination period I can appreciate that the appellant feels the Council should have notified them of the intention to refuse before the decision date. However, there is no statutory requirement to inform applicants of consultee comments or to publish such comments on the Council's website and the reasons for refusal clearly indicate why the development was refused. It is also evident that the Council sought a meeting within the determination period and this was cancelled by the appellant at short notice. Consequently, I am not satisfied that the Council has acted unreasonably.
9. In any case, there was a second reason for refusal. With regard to the need for a Sequential Test, I have outlined in my decision why I consider that the development would trigger the requirement for the Test. As such, even if I concluded that the Council had acted unreasonably in respect of the transport assessment, the lack of a Sequential Test would have remained outstanding.
10. Both parties refer to an application on the appeal site that has now gained permission. However, this is of no relevance to this costs application.
11. Consequently, I do not find that the Council has acted unreasonably, and nor do I consider there has been wasted expense. I therefore find that unreasonable behaviour resulting in wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not justified.

Amanda Blicq

INSPECTOR

² Email 9 December 2016 from Hertfordshire County Council to Vectio Consulting

³ Email 22 December 2016 from Vectio Consulting to Hertfordshire County Council

⁴ Emails 3 January 2017 between the parties