
Costs Decision

Site visit carried out on 8 August 2017

by Mrs J A Vyse DipTP DipPBM MRTPI

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

Decision date: 21 September 2017

Costs application in relation to Appeal Ref: APP/V4305/W/17/3171254 Coopers Moss, Perimeter Road, Kirkby Industrial Park, Knowsley L33 3AF

- 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 P Casey Enviro Limited for a full award of costs against Knowsley Metropolitan Borough Council.
 - The appeal was against the failure of the Council to issue notice of its decision within the prescribed period on an application for planning permission for the reclamation of tipped contaminated and derelict land through the importation of soils and soil forming materials; formation of new access; temporary construction of internal road, site offices and storage structure; car park and infrastructure compound with restoration to agriculture.
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Decision

1. For the reasons set out below, the application the application for an award of costs is refused.

Reasons for the Decision

2. Irrespective of the outcome of an appeal, the Government's Planning Practice Guidance advises that costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The unreasonable behaviour alleged by the appellant in this case relates to the failure of the Council to determine the application within the prescribed period even though it had all the information required, including an Environmental Statement including Technical Appendices. The application was validated by the Council on 23 May 2016. Notwithstanding an agreed extension of time for determination until 10 October 2016, the Council still had not issued a decision some nine months after the application was made.
4. The application the subject of this appeal followed an earlier application for a similar proposal on the site. The reasons for refusal in that case related to the development comprising inappropriate development in the Green Belt; the measures proposed being in excess of what was required to restore the land to agricultural use; concerns in relation to contamination; impact on existing tree cover; and the absence of any very special circumstances to outweigh the harms identified. The appealed application was accompanied by additional environmental information and sought to address the earlier concerns. In the light of that additional material the Council's statement confirms that, subject to appropriate conditions, no objections were pursued in relation to matters including contaminated land and impact on trees. However, the principle of the development proposed remained at issue, the Council maintaining its position

that the proposal comprised inappropriate development in the Green Belt, the appellant continuing to take the opposite view. The Council also had concerns in relation to the effect of the development on the character and appearance of the area.

5. In failing to determine the application within the prescribed period, or even within the extended period agreed by the appellant, the Council's behaviour was unreasonable, particularly since technical matters appear to have been resolved and given that the remaining matters at issue related to the principle of the development proposed and effect on character and appearance, matters that did not require the submission of significant technical evidence. However, for an award of costs to succeed, there needs to have been some wasted or unnecessary expense on the part of the appellant.
6. It is clear from the Council's position at appeal that, had it determined the application permission would have been refused. The appellant would, therefore, have incurred the expense of submitting an appeal to pursue the matter in any event, which would have followed a similar path to that of the current appeal. I note in this regard that the appellant's case relied on the extensive material submitted with the planning application.
7. In the event, for the reasons set out in the Appeal Decision, I agreed with the Council that the scheme comprises inappropriate development in the Green Belt. Whilst I agreed with the appellant that, on completion there would be some, albeit minor benefit to the character and appearance of the area, there would be harm, as acknowledged in the LVIA, during the extended construction process. The absence of any means of securing completion of the works exacerbated those concerns. Even when taken together, the other considerations promoted by the appellant did not clearly outweigh the harms I identified and so the very special circumstances necessary to justify the proposal did not exist. As a consequence, the appeal failed.
8. Therefore, whilst the Council's behaviour was unreasonable in failing to determine the application within the prescribed period, that behaviour has not resulted in unnecessary or wasted expense on the part of the appellant and an award of costs is not justified in this instance

Jennifer A Vyse
INSPECTOR