
Costs Decision

Hearing Held on 16 January 2018

Site visit made on 16 January 2018

by Wendy McKay LLB Solicitor (Non-practising)

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

Decision date: 15 March 2018

Costs application in relation to Appeal Ref: APP/U1050/W/17/3179448 Arden Quarry, Oven Hill Road, Birch Vale, Derbyshire, SK22 1BY

- 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 for a full award of costs against Derbyshire County Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the extraction of and removal of mineral reserves.
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Decision

1. The application for an award of costs is refused.

The submissions for P Casey Enviro

2. The costs application was submitted in writing prior to the Hearing and a response to the Council's submissions was provided orally at the Hearing.
3. In summary, those oral submissions explained that there was not a draft Statement of Common Ground (SoCG) provided with the original appeal documentation as it was put in as a written representations appeal and a SoCG is not required for that procedure.
4. In relation to the timing of the submission of the draft SoCG, before the actual submission of that document the Appellant had made contact with the Council to try and agree the contents and the specific areas that needed to be covered. No agreement was reached as to what should be included so it was put together using published information. The information that the Appellant supplied was in accordance with Annex T of the Procedural Guide. They were factual aspects and it was reasonable to believe that the Council could agree them.
5. As regards the incorrect application of Development Plan policy by the Council, it had agreed today that that had happened in that the word "and" had been read into the relevant policy instead of "or".
6. The Town and Country Planning (Development Management Procedure) Order 2015, paragraph 35 (1)(b), looks at the notice of decision for planning applications. This states that where planning permission is refused the notice must state the full reason for refusal.

7. The Appellant had included information on the aspect of need in the original application. At no time was the Appellant advised that the information provided was insufficient for the Council to determine the application.

The response by Derbyshire County Council

8. The Council's response to the costs applications was submitted in writing at the Hearing.

Reasons

9. The Planning Practice Guidance (PPG) 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. The purpose of the costs application process is to decide whether or not an award of costs in respect of the appeal is justified on the available evidence in a particular case.
10. The PPG provides that awards against a local planning authority may either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The PPG sets out examples of situations where an award of costs might be applicable. The examples given in the PPG mainly relate to planning appeals and are not exhaustive.
11. The Appellant asserts that the Council failed to co-operate in agreeing the SoCG; that the Council has not correctly applied Development Plan policy; that the Council failed to attribute appropriate weight to Development Plan policies; that the Council's reasons for refusal are vague and do not stand up to scrutiny; that the Council has failed to produce evidence to substantiate its reasons for refusal, in particular ground 4, and finally that the Council's handling of the planning application has resulted in unnecessary and wasted expense for the Appellant.
12. The Appellant claims that the Council's approach to the production of the SoCG and its ignoring of the relevant Procedural Guide has put the Appellant to unnecessary and wasted time in drafting a statement from which large sections of factual information were deleted by the Council.
13. The Council submits that there was no unwillingness on its part to co-operate with the Appellant for the production of an agreed SoCG. It draws attention to the date of submission of the first draft of the SoCG by the Appellant and the proximity of that date to the date of submission of its own Statement of Case. It also draws support from the e-mail exchange between the parties on this topic and contends that this shows that the Council's officer gave conscientious attention to the appropriateness of the content of the SoCG.
14. Given the timescales involved following the change of procedure in this appeal, I do not find the timing of the Council's response to the first draft SoCG to have been unreasonable. Although the Council ultimately did not agree to the inclusion of some of the draft text within the final document, the Appellant has submitted an 'Addendum to the SoCG' which forms part of the appeal documentation.
15. The Council point to the second bullet point at paragraph T.2.5 of Annex T of the guidance which states that the SoCG should "*be concise and not duplicate information already sent – by anyone*". I concur with the Council that there

was no need for non-contentious details such as lists of plans and documents to be itemised in the SoCG given that much of that material was to be found elsewhere in the appeal documentation. Moreover, whilst the SoCG form referred to in Annex T provides a helpful guide, there is no statutory requirement which specifically prescribes the content of an agreed SoCG.

16. In conclusion, I do not find the Council to have behaved unreasonably as regards the draft SoCG submitted by the Appellant, either in relation to the timing of its response or in its rejection of parts of the initial draft. Furthermore, although not included within the formal SoCG much of the rejected contents are, in any event, before me in the form of the Appellant's Addendum.
17. Turning now to the application of the Development Plan policies, the Appellant is critical of the Council's reference to the site as both a 'new site' and an 'extension to a site' in Development Plan terms.
18. The Council contends that there is no inherent incoherence or contradiction in its analysis of Development Plan policies. It points out that the proposed development would physically extend part of an existing quarry void created by previous mineral working but, on the other hand, there is neither an extant permission for mineral winning and working, nor any Development Plan allocation for the quarry which the proposed development would be extending.
19. The question of whether the site should be considered as a 'new' site or as an 'extension' to an existing site was a topic for discussion by participants at the Hearing. Given the historic background and the lapse of the minerals extraction permission, I do not consider that the Council acted unreasonably in adopting a dual approach to its analysis of Development Plan policies at the application decision stage.
20. As regards the Council's approach to the degree of consistency of the Development Plan Policies with the National Planning Policy Framework (Framework), the Appellant submits that the Council's failure in this respect is unreasonable and has put the Appellant to wasted expense in seeking to address this shortcoming.
21. The Council contends that it has simply reached a different view to that insisted upon by the Appellant in relation to the consistency of the current saved Development Plan policies with the Framework and the continuing relevance of these policies.
22. The Council's position on this matter was set out in its Statement of Case and in its oral evidence to the Hearing. Whilst I disagree with the Council as to the degree of consistency of the saved policies with the Framework, as is evident from my decision on this appeal, I do not believe that it acted unreasonably in taking the approach that it did to the Development Plan either in refusing the application or on appeal. This was a matter of judgment in the light of the relevant Development Plan and Framework policies to be read in their full context. I do not consider that it was inevitable that the point would be resolved in the Appellant's favour.
23. On the matter of the vagueness of the reasons for refusal and the failure to substantiate those reasons, the Appellant is critical of the drafting of the reasons for refusal. Although the reasons given do not make reference to

specific aspects of national policy set out in the Framework or the PPG, there is specific reference to Development Plan policies relevant to the decision as required by the Town and Country Planning (Development Management Procedure) Order 2015.

24. The Appellant also submits that reason for refusal 4 makes vague and generalised assertions about the proposal's impact which are unsupported by any objective analysis.
25. The Council contends that this reason for refusal conveys its reasonable view of the unacceptability of an unusual side effect of the proposed development and that it was self-evident that such an addition to void space requiring infilling by landfilling would have significant adverse impacts on local amenity.
26. In my view, the reasons clearly and precisely explain why planning permission was refused. I do not find them to be unduly vague or imprecise. I consider that reason for refusal 4 sets out in sufficient detail the Council's concerns in relation to the side effect of the scheme in the form of the increase in capacity of the void and consequently the overall scale and duration of the landfill operation. Whilst ultimately I disagree with the Council as to the weight to be attached to this concern, I do not believe that it acted unreasonably in refusing planning permission on this ground or in the drafting of that reason for refusal.
27. In relation to the Council's handling of the planning application, the Appellant complains that the Council did not seek additional information from it, particularly in relation to the key issue of 'need' and that a more helpful and communicative approach on the part of the Council could have resulted in narrowing the grounds for refusal.
28. However, I concur with the Council that the Appellant must bear the primary responsibility for the provision of whatever information it might consider necessary or appropriate to support the application. I also note that the Council postponed its decision on the application to enable the Appellant to produce additional material. The content of that material did not prove sufficient for the Council to change its position. I do not believe that the Council acted unreasonably in relation to the handling of the planning application.
29. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Wendy McKay

INSPECTOR