
Costs Decision

Hearing Held on 22 February 2018

Site visit made on 22 February 2018

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 4 April 2018

Costs application in relation to Appeal Ref: APP/A2280/W/17/3181443 Flanders Farm, Ratcliffe Highway, Hoo St. Werburgh, Rochester ME3 8QE

- 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 AC Goatham and Son for a full award of costs against Medway Council.
 - The appeal was against a refusal of planning permission for the construction of a new grading, packing and storage facility with ancillary access, hardstanding, landscaping and relocation of refuelling point without complying with a condition attached to planning permission Ref MC/14/3063, dated 2 April 2015.
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Decision

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

The submissions for AC Goatham and Son

2. The applicant's case was made in writing at the Hearing. It seeks a full award of costs on the basis that the Council was inconsistent in its determination of similar cases, prevented or delayed development, retained a condition that does not meet the tests in the National Planning Policy Framework (the Framework) and that it also failed to substantiate the reason for refusal at appeal, made inaccurate assertions without objective analysis and that its refusal to remove the condition was unreasonable.

The response by Medway Council

3. The Council's response distinguished between the applications given planning permission on the appeal site which included no similar condition as being of substantially smaller scale or less impact than the appeal building and therefore not prompting the need for such a condition. The Council maintained that the environmental harm which would arise from the cessation of the use of the building justified the retention of the condition.

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 5. It describes not determining similar cases in a consistent manner; delaying or preventing development which should be permitted; imposing a condition
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- which does not meet the tests in the Framework; making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and failing to produce evidence to substantiate a reason for refusal as examples of unreasonable behaviour.
6. There is a difference in scale between this building and those in the other applications on the site which have no similar condition. Moreover, the building in this appeal also has a cumulative effect alongside the others. The inconsistency in the conditions across applications does not therefore amount to unreasonable behaviour.
 7. There is no evidence that the implementation of the development was materially delayed by the presence of the condition. I considered the indirect financial effects of the condition on the appellant's business, but these do not relate to expense in the appeal process and are not therefore subject to an award of costs.
 8. Notwithstanding this, my decision allowed the appeal and granted permission without the contentious condition which I found to be unnecessary, irrelevant to the development and to planning, difficult to enforce, imprecise and unreasonable.
 9. Members of a Council are not bound to accept the recommendations of their officers. However, if officers' professional advice is not followed, the Council should show reasonable evidence on appeal for taking a contrary decision. While the Council argued its case both in its Statement and at the Hearing, the reasoning behind the imposition of the condition confused the effect of the presence of the building with the effect of its use. It was unable to substantiate its position on the main issue because the condition was untenable and its imposition irrational. I find that the Council was unreasonable in refusing to remove the condition.
 10. Accordingly, I conclude that unnecessary or wasted expense, as described in the PPG, has been demonstrated and that therefore a full award of costs is justified.

Costs Order

11. 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 Medway Council shall pay to AC Goatham and Son, the full costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Medway 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.

Patrick Whelan

INSPECTOR