



Costs Decision

Hearing Held on 30 April 2019

Site visit made on 29 & 30 April 2019

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th May 2019

Costs application in relation to Appeal Ref: APP/W0530/W/18/3198003 Sawston Joinery, London Road, Pampisford, Cambs, CB22 4EE

- 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 Sawston Joinery Ltd for a full award of costs against South Cambridgeshire District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of small industrial units and replacement with a 2 storey workshop & office building for Sawston Joinery.
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Decision

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

The submissions for Sawston Joinery

2. The submission was made in writing and not expanded on at the hearing. The focus of the applicants' case is that the Council has failed to produce evidence to substantiate the reason for refusal. More specifically that the issue in question is capable of being dealt with by condition and that the Council did not promptly review the case. As such there was no reasonable justification for refusing planning permission.

The response by South Cambridgeshire District Council

3. At the hearing the Council advised that it is not defending the principle of the appellants costs claim.

Reasons

4. 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.
5. The applicants submit that the council had all the information that it needed to address the issues early in the overall planning process. In particular that the applicants demonstrated that the appeal site and scheme is not associated with the tannery. The applicant engaged EPS from an early stage and on the applicants' behalf they have shared factual information with the Council. The fundamental point being that the information adequately demonstrated that there was no issue with chlorinated solvents and that the hydrocarbon issues could be dealt with by condition.

6. On the issue of groundwater contamination, in spite of its assertion within the statement of case, the Council has not provided any evidence that the appeal scheme would directly lead to contamination of groundwater from chlorinated solvents. The Environment Agency (EA) have throughout the application process requested deep intrusive investigations at the appeal site. However, the EPS investigations demonstrated that neither shallow soils or groundwater were contaminated with tannery solvents. In this context no evidence has been provided to suggest that further investigation would be required.
7. It is clear from the documentation that the Council adopted the approach of the Environment Agency without having due regard for the circumstances of the appeal site. The applicants have provided a desk study and two site investigations with the first report submitted in 2014. In addition the documentation demonstrates that the site history was known to the Council and EA around 2016. The information provided as part of the appeal reinforced these points. Therefore, I agree with the applicants that it was not wholly 'new evidence' as the Council suggest.
8. Following consideration of what it describes as the 'new evidence' the Council decided not to defend the reason for refusal at appeal. However, based on the information before me it appears that, as the applicant submits, the Council had the necessary information prior to making a decision on the application. In summary therefore, whilst it is reasonable for the Council to apply judgement in decision making this must be supported by proper analysis and evidence. Instead, assertions were made about the effects of the appeal scheme that could not be supported. This has led the applicants to incur unnecessary and wasted expense dealing with this matter on appeal. As a result, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and a full award of costs is justified.

Costs Order

9. 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 South Cambridgeshire District Council shall pay to Sawston Joinery Ltd, the 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.
10. The applicants are now invited to submit to South Cambridgeshire District 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.

D J Board

INSPECTOR