
Costs Decision

Site visit made on 4 June 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2019

Costs application in relation to Appeal Ref: APP/A1910/W/18/3219155 Berry Farm, Upper Bourne End Lane, Hemel Hempstead HP1 2RR

- 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 Gabor Varga of Bourne End Ltd for a full award of costs against Dacorum Borough Council.
 - The appeal was against the refusal of planning permission for erection of two polytunnels and barn for the purpose of agriculture.
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Decision

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

Reasons

1. Irrespective of the outcome of an appeal, Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
2. Whilst not expressly stated, the applicant is seeking a full award of costs on the substantive ground that the Council refused the application on vague, generalised or inaccurate assertions about the proposal's impact. Moreover, it relied on Policy CS5 of the Dacorum Core Strategy 2006-2031 (September 2013) (the DCS) which, the applicant contends, is either irrelevant or the proposal fully complies with it. In addition, the applicant submits that planning permission was unreasonably refused on a planning ground that was capable of being dealt with through the imposition of planning conditions. The applicant also submits that the Council acted unreasonably by demonstrating inconsistency in decision-making, having previously granted permission for a purportedly similar proposal for a farm track at nearby Long Lane in Bovingdon¹.
3. As such, it is contended that the planning application should have succeeded and the appeal was unnecessary resulting in unnecessary and wasted expense.
4. The PPG states that local planning authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal.
5. In this case, the permission was refused by the Council's Development Control Committee contrary to the advice of the planning officer. However, the

¹ Ref 4/03236/17/FUL

Committee was not bound by that advice. The refusal notice confirms that, in contrast to the fundamental objections raised by some Interested Parties, the Committee's concern was restricted to the effect of the proposed access track and car park on the countryside and the Green Belt.

6. In this regard, the refusal reason is clear and specific in articulating that in the judgement of the Committee the extent of, and materials proposed for, the hard surfacing works would be harmful to the countryside and the Green Belt. The Committee was entitled to form that view and did not act unreasonably in doing so.
7. Moreover, given the Committee's concerns over the effects of the creation of hard surfacing in principle, which would permanently alter the landscape, it was also entitled to form the view that these could not be overcome through the imposition of planning conditions. Again, whilst not a matter with which I concurred, it was nonetheless not unreasonable in reaching that view.
8. Turning to the Development Plan, my appeal decision notes that DCS Policy CS5 only specifically addresses developments involving the construction of new buildings. Whilst that Policy does not therefore expressly set out local policy relevant to the Council's stated concerns, it nonetheless is clear that it defers generally to national planning policies relating to the Green Belt without qualification.
9. In this regard, the main issue in this case related to proposed engineering operations in the Green Belt which is a matter required to be assessed under Paragraph 146 of the National Planning Policy Framework (the Framework). The Council was not therefore unreasonable in referring to Policy CS5 in support of its decision as that Policy relates, albeit indirectly, to the Framework. In any event, even if Policy CS5 were to be considered irrelevant to the stated reason for refusal, this was a matter which was capable of being rebutted relatively simply by the applicant without any undue wasted expense.
10. As regards consistency in decision-making, the Council has indicated that there are clear distinctions between that approved under planning permission ref 4/03236/17/FUL and the appeal proposal. Whilst failing to demonstrate consistency in decision-making can amount to unreasonable behaviour, the level of detail provided by the applicant with respect to the scheme at Bovingdon does not enable me, in this case, to consider in depth whether the two schemes were in fact reasonably comparable. As such I cannot reach the conclusion in this case that the Council acted unreasonably in this regard.

Conclusion

11. For the above reasons, I conclude that Council did not act unreasonably in refusing planning permission and did not cause unnecessary expense in the appeal process. Accordingly, having regard to the PPG, an award for costs is not justified.

Ian Bowen

INSPECTOR