



Costs Decision

Inquiry Held 16 July 2019 to 18 July 2019

Unaccompanied site visits made on 15 July 2019 & 19 July 2019

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th August 2019

Costs application in relation to Appeal Ref: APP/U1105/W/19/3221978 Employment Site, Two Bridges Road, Sidford EX10 9QR

- 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 Tim & Mike Ford (OG Holdings Retirement Benefit Scheme) against East Devon District Council.
 - The appeal was against the refusal of outline application (with scale and appearance reserved) for the change of use of agricultural land to employment land (B1, B8 and D1 uses) to provide 8,445 sqm of new floorspace, new highway access, cycle and footway, improvements to flood attenuation, building layout and road layout, new hedgerow planting and associated infrastructure
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Decision

1. The application for a full award or a partial award of costs is refused.

The submission of Mr Tim & Mike Ford (OG Holdings Retirement Benefit Scheme)

2. The appellant's application for a full award of costs was made in writing before the opening of the Inquiry. However, this was added to at the Inquiry with a further written submission seeking either a full award of costs or a partial award of costs cross referencing the closing submission. This was also added to verbally. There are four grounds, one to three are for a full costs award the fourth seeks a partial award. I summarise each below.
3. Ground one is that the key reason for having a development plan is to provide certainty. The site is allocated for employment development and underpinned by a raft of evidence which demonstrates the need for it. The Council unsuccessfully sought to remove the allocation from the development plan and subsequent meetings with Councillors have suggested that the site was unlikely to receive planning permission for any proposals such as that proposed. It is alleged that this has delayed the implementation of the development plan, frustrating the purpose and reason for having it. It is suggested that wherever the employment need is met in Sidmouth it would generate Heavy Goods Vehicle (HGV) movements on the A375. Overall it is alleged that the proposal clearly accords with the development plan and should clearly have been permitted and therefore the Council's unreasonable behaviour has caused unnecessary delay and wasted expense.
4. Ground two relates to an alleged failure to substantiate the reason for refusal. It is alleged the Council wrongly focussed on the comparability of the appeal site road network with the road networks of sites used to forecast vehicle trips taken from the Trip Rate Information Computer System (TRICS). It is alleged this was raised late in the process and if the Council had fully considered the

matter it would have led them to the conclusion that this meant the trip forecasts were over estimates of the HGV trips nullifying the Council's argument. Furthermore, the Council did not and should have undertaken its own assessment of trip generation as this was the principal area of disagreement. When questioned at the Inquiry, it is alleged the Council failed to give any indication as to what level of HGV movements may be acceptable or engage meaningfully with the appellant's evidence on trip generation.

5. Ground three is based on the allegation that the Council's case is not supported by objective analysis, specifically in terms of trip generation. It is alleged that the TRICS sites had been used in previous assessments as far back as 2012 without question up until recently. It is also alleged that it was accepted during the Inquiry that there was no criticism of the TRICS sites in terms of their use and the Council acknowledged that they may well over predict trips and that no single reportable accident points to a highway concern. It is submitted that the evidence given to the Inquiry demonstrates that the reason for refusal is not substantiated because there is simply no evidence from the Council as to the number of HGV trips generated nor what change is unacceptable.
6. Ground four is based on the Council's alleged failure to grant planning permission subject to a condition. It is alleged that had the Council done this the issues in dispute through an appeal against a condition would have been much narrower. It would have negated the need for evidence and time spent at the Inquiry on issues such as those relating to the development plan context and economic and social needs and benefits.

The response by East Devon District Council

7. The Council's response to the application for a full award of costs was made in writing before the opening of the Inquiry. This was added to at the Inquiry with a further written submission responding to the appellant's further written application seeking either a full or partial award of costs. The response was also added to verbally. The Council's response to each of the four grounds is summarised below.
8. In response to ground one, it is suggested that the delegated officer report, the statements of common ground, the proofs and the response to the questions asked clearly demonstrate the Council's commitment to the development plan.
9. With regard to the second and third grounds, the Council draw attention to the proof of evidence, consultation responses and detailed measurement and assessment of the road network.
10. In response to the fourth ground, the Council submit that they advised the appellant that they would grant permission subject to a condition which limited the B8 (storage or distribution) to no more than 10% but this was not accepted by the appellant. Whilst an alternative condition was suggested by the appellant this was not acceptable to the Council. As a suitable condition could not be agreed the Council submit that they rightfully proceeded to issue the decision.

Reasons

11. 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.
12. The Councils decision was based on a single reason for refusal which explained the proposed development, by virtue of the proposed B8 uses, would result in an increase in HGV traffic on the surrounding road network, both in the vicinity of the site and through Sidbury which both suffer from inadequate road widths and a lack of footways. As such increased HGV movements within this area will result in conflicts between vehicles, and between vehicles, cyclists and pedestrians, to the detriment of highway safety.
 13. Further explanation of these specific concerns was provided in the officer's delegated report dated 16 October 2018. This quotes in full and relies on the comments of the Highway Authority dated 27 June 2018 and notes footway and carriageway widths, pinch points and specific characteristics of the routes which HGV's generated by the proposal would use. It explains why in the Council's and Highway Authority's view these features lead to the conflicts referred to in the reason for refusal¹.
 14. It is clear from those Highway Authority comments that instead of recommending refusal a condition was recommended limiting the B8 (storage or distribution element) to no more than 10%. The "Transport and Access" section of the officer's delegated report shows that dialogue and correspondence took place between the Highway Authority and the appellants prior to the writing of the officer's delegated report and issuing the decision. This included the appellant's technical note on HGV's and the appellant's suggestion of an alternative condition.
 15. In my view, whilst narrow the Council's single reason for refusal is clear and precise. It is specifically founded on the perceived conflict which would occur between road uses at specifically identified pinch points which are examined in detail by the Highway Authority and supported by a clear explanation why they believe at those points the road is too narrow to sustain the increase in HGV movements.
 16. It is agreed there would be an increase in HGVs arising from the proposal, but other than the number of movements the appellants have provided limited evidence to try to explain why the increase in movements passing through each of the specific pinch points is not harmful. The appellant has focussed on HGV trips generated, detailed technical analysis of the specific locations identified by the Highway Authority has not been undertaken, instead a more general assessment is made together with comparisons with other class A rural roads. Had the appellants undertaken their own detailed analysis of HGVs passing through the identified pinch points the Council's clearly articulated but narrow concerns may have been alleviated.
 17. Therefore, whilst I have found in the appellant's favour, the lack of engagement with the Council's very specific concerns and evidence, left the Council with the option of either granting planning permission subject to the condition recommended by the Highway Authority or to refuse planning permission.

¹ Sections headed 5.3.3, 6.2.3, 6.2.4, 6.6.1 of the County Highway Authority observations in the Officers Delegated Report

18. There is no substantive evidence before me to suggest that the appellant explicitly instructed the Council to grant planning permission subject to the condition suggested by the Highway Authority which would limit the B1 (storage or distribution) use to 10% instead of issuing a refusal. There is evidence which shows it was not considered acceptable to the appellants. Without agreement to the imposition of a condition which would have changed the nature of the development applied for it would not have been reasonable for the Council to grant a permission imposing it. The Council did not agree to the appellant's alternative condition and gave clear reasons why. The only option was therefore to refuse planning permission.
19. Therefore, with regard to ground one, the "Background and Site History" sections of the officer delegated report make clear that the Council has no objections with regard to the principal of employment development on the allocation. They were willing to grant permission subject to conditions. The reason for refusal refers to a conflict with Policy TC7 of the East Devon Local Plan 2013 to 2031 (2016) (LP) and in my view the Council's perceived conflict with the LP in this regard was clearly explained.
20. With regards to grounds two and three, even though I agree that the Council have not appropriately engaged with the appellant's HGV trip forecasting evidence I also find the appellant did not appropriately engage with the Council's detailed evidence with regard to specific pinch points on the surrounding road network. Had the appellant's done so, they may have been able to satisfy the Council's concerns. It was agreed additional HGV trips would be generated and it was the effect of that increase which was of primary concern to the Council. There was no necessity for the Council to gather its own evidence to forecast HGV trips and overall with regard to grounds two and three, I find the Council's reason for refusal was substantiated by objective analysis and the Council has not therefore acted unreasonably in this regard.
21. With regard to ground four, neither the condition suggested by the Council or the appellant limiting the B8 (storage or distribution) element of the proposal were agreed. For this reason, the Council acted reasonably in refusing planning permission and not issuing a grant of planning permission subject to either of those conditions.
22. Consequently, against this background I find the appeal and its scope was inevitable. Thus, with regard to all grounds, I find that unreasonable behaviour leading to unnecessary expense has not been demonstrated. Therefore, neither a full or a partial award of costs on any of the grounds is justified.

L Fleming

INSPECTOR