Costs Decision

Site visit made on 14 January 2020

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2020

Costs application in relation to Appeal Ref: APP/U3935/W/19/3240396
Fairview, Kingsdown Lane, Blunsdon, Swindon SN25 5DL

- 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 Marc McDermott for a full award of costs against Swindon Borough Council.
- The appeal was against the refusal of planning permission for change of use of portal framed shed (30 x 12 x 4m) from canine care centre to use as vehicle body shop and campervan conversion centre.

Decision

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

Reasons

2. The National Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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.

3. The Council assessed the scheme against the development plan and national policy. While an objective analysis of the relevant matters is required, there will inevitably be an element of subjectivity. That the main parties disagree over the weight to be afforded to certain matters in the planning judgement is not uncommon and does not imply one party has been unreasonable. Ultimately the Council considered that the negative impacts of the scheme outweighed any benefits.

4. While I disagreed with the Council, they have provided reasons for their decision in the officer report and also in their appeal submissions. They have adequately substantiated a case for each of their refusal reasons and these were based on the planning merits of the scheme. Given the concerns from the Council, other than the principle of the use at this location, the evidence before me indicates that they would have still refused the application had they applied policies in the manner the appellant suggests.

5. As a result of the content of the policies relevant to the development, the effect of it on living conditions is a consideration of the scheme. This would have been so even if there were no comments from nearby residents or technical consultees regarding noise. While I have allowed the appeal, I have considered it necessary to impose conditions relating to this matter, including requiring further information in relation to noise.

6. Earlier or greater liaison between the parties may have provided greater clarity over the issues. Nevertheless, this would not have resulted in the appeal being avoided altogether due to the Council's other concerns with the appeal scheme. Similarly, while a temporary permission may have addressed part of the Council's concerns, it is not clear to me that this would have led to the scheme being approved.

7. The Council did not adhere to certain aspects of the appeal timetable. Nonetheless, the delay was not significant and did not introduce any additional matters for the appellant to respond to. There is no clear evidence that this delay led to any unnecessary or wasted cost to the appellant.

8. The previous application at the appeal site was for a different type of business and for a new building rather than the change of use of an existing one. The Council did not reach the same decision on both proposals. Nevertheless, while some policies would have applied to both schemes, they are materially different. As such, their consideration of them and affording different weight to certain factors does not mean they have been inconsistent in their determination of the cases.

9. While I have disagreed with the Council and found the scheme to be acceptable, in this instance they have made a case to support their decision. Consequently, I do not find that the applicant has been put to unnecessary or wasted expense in pursuing the appeal.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Stuart Willis

INSPECTOR