

Costs Decision

Site visit made on 30 October 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2020

Costs application in relation to Appeal Ref: APP/L1765/W/19/3234053 Whiteley, Rookery Avenue, Whiteley, Hampshire PO15 7AJ

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Amsric Foods Limited for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission for the erection of a drive-thru restaurant (Class A3/A5 – Sui Generis) with associated advertisements, car parking, access, servicing, landscaping, engineering works and ancillary works.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ (the PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG states that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.
3. The applicant considers that the Planning Committee's decision to refuse the application, contrary to the Case Officer's recommendation, prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations. It is also argued that the Council failed to produce evidence to substantiate each reason for refusal on appeal, and determine similar cases in a consistent manner.
4. Furthermore, the applicant is of the view that members of the Planning Committee made vague, generalised and inaccurate assertions about the impact of the development proposal, which were unsupported by any objective analysis. Lastly, it is alleged that the Council behaved unreasonably in requiring the applicants to enter into a planning obligation which does not accord with the law or the National Planning Policy Framework on planning obligations and conditions.
5. A decision made by the Planning Committee contrary to the Case Officer's recommendation does not in itself constitute unreasonable behaviour. Members

¹ Appeals (Paragraph: 030 Reference ID: 16-030-20140306).

are entitled to reach a different decision, as long as they do so whilst relying on substantive planning grounds. Whether or not members of the Planning Committee were influenced by what the applicant describes as vague, generalised and prejudicial assertions, the appeal proposal was ultimately found contrary to the development plan by the Council, notably because the site forms part of an area allocated for B1, B2 or B8 employment use. In doing so, members exercised their Planning and Compulsory Purchase Act 2004 section 38(6) duty.

6. However, the Council had previously granted planning permission on the adjacent site for a Lidl superstore. Although the Council argue that sufficient supporting information had been provided to justify the granting of permission in that particular case, it is not clear, on the basis of the information before me, why members reached a different conclusion in respect of the appeal development. In other words, the Council have not set out in detail to which extent the supporting information submitted by the applicant was not sufficient to justify a similar departure from the development plan. This shows inconsistency in the Council's position.
7. The PPG clearly states that not determining cases in a consistent manner is a type of behaviour that may give rise to a substantive award of costs against a Local Planning Authority. To my mind, that is exactly what occurred here, and I find that the Council have acted unreasonably in refusing permission for the appeal development in respect of the first aspect of the reason for refusal.
8. With regard to the effect of the proposal on the capacity and efficiency of the highway network, I consider that the Council failed to have due regard to the detailed evidence submitted by the applicant as part of the application, having particular regard to the Transport Assessment and subsequent Supplementary Transport Notes. In particular, the Council failed to provide any substantiated evidence to oppose the applicant's findings and justify their decision, including in respect of the financial contribution towards the Parkway South Roundabout Improvement Scheme.
9. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated, and a full award of costs is therefore justified in this instance.

Costs Order

10. 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 Winchester City Council shall pay to Amsric Foods Limited, 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.
11. The applicant is now invited to submit to Winchester City 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.

S Edwards

INSPECTOR