



Costs Decision

Hearing Held on 11 March 2020

Site visit made on 11 March 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st April 2020

Costs application in relation to Appeal Ref: APP/L3245/W/19/3236638 Land off Holyhead Road (Former A5), Nesscliffe, Oswestry, SY4 1AY

- 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 Ed Aldridge of Westerleigh Group Ltd for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for the erection of a new crematorium with associated access, car parking and landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance 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.
3. The appellant submits that the Council has acted unreasonably in that it has failed to produce evidence to substantiate its reasons for refusal, which were against officer advice, and has made only vague and generalised assertions about the proposal's impact. Accordingly, it is asserted that the Council has prevented or delayed development which should clearly have been permitted.
4. The Council's first reason for refusal was based on the cumulative effect of noise, disturbance, and odour on mourners and visitors to the proposed crematorium. In this regard, the MoD and RAF Shawbury submitted detailed representations which stated that low flying high speed military helicopters regularly flyover in the vicinity of the appeal site. The implications of the development for helicopter training operations was also described at length. The Council relied on these representations to inform its case, which was not an unreasonable approach. In addition, the appellant's own evidence indicates that noise from the adjoining A5 would exceed the WHO guidelines for outdoor living areas, after the installation of mitigation measures. Moreover, the Council referred to the findings of the appellant's Odour Assessment in making a cumulative case for the effect that odour would have. I therefore have a full and detailed case before me in relation to these matters, and the Council did not act unreasonably in this regard.

5. The Council's second reason for refusal related to the effect of the development on the surrounding landscape. In this regard, the effect of a development on the wider landscape, and on the setting of heritage assets, is to an extent a matter of planning judgement. I have a reasoned case before me in relation to these matters. Similarly, whether the benefits of a scheme outweigh the totality of its harm is also a matter of judgement, and I do not consider that the Council acted unreasonably in coming to this view.
6. The application was reported to the Council's Central Planning Committee with an officer recommendation for approval. The Council is not bound to accept the recommendations of its officers. In this case, clear and specific reasons for refusal have been prepared and I share its view that in respect of noise and disturbance, the proposal would be unacceptable.
7. The appellant has drawn my attention to various sections within Circular 03/2009. However, that guidance was withdrawn a number of years ago and I therefore attach little weight to it. In any case, this withdrawn guidance would not have led me to a different conclusion.
8. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Thomas Hatfield

INSPECTOR