



Costs Decision

Inquiry Held on 22-25 October 2019 and 8-9 January 2020

Site visit made on 10 January 2020

by Kevin Ward BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15th May 2020

Costs application in relation to Appeal Ref: APP/N2739/W/19/3231656 Gascoigne Wood Interchange, Lennerton Lane, Sherburn in Elmet LS25 6LH

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Samuel Smith Old Brewery (Tadcaster) for a full award of costs against Harworth Group PLC.
 - The Inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for development described as outline planning application with all matters (scale, appearance and layout) except access and landscaping reserved for the demolition of existing colliery buildings and the construction of up to 186,000sqm (approx. 2,000,000sqft) of Class B2/B8 and associated Class B1 floorspace, with supporting container storage area and associated buildings, trackside facilities, access and landscaping.
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Decision

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

The submissions and response

2. Given time constraints it was not possible to hear the application for costs at the Inquiry. It was submitted in writing on 20 January 2020 and the response was submitted in writing on 24 January 2020.

Reasons

3. The 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.
4. There is a dispute between Samuel Smith Old Brewery (Tadcaster) and Harworth Group PLC (the Appellant) as to whether the proposed development falls within the definition of a Nationally Significant Infrastructure Project (NSIP). Samuel Smith Old Brewery (Tadcaster) argues that it meets the relevant conditions of S26 of the Planning Act 2008 and is therefore an NSIP which must be dealt with under that regime rather than as an application for planning permission. As a consequence, Samuel Smith Old Brewery (Tadcaster) argues that the appeal could not have led to the necessary consent for the proposed development and intended use.

5. The Appellant argues that the proposed development would constitute an alteration to a rail freight interchange which would increase the area of land on which the rail freight interchange is situated by less than 60ha and so does not fall within the NSIP regime.
6. Given my conclusion that the appeal should be dismissed, it was not necessary for me to pursue this matter further in my written decision. In terms of this costs application, the first question to address is whether the Appellant has behaved unreasonably.
7. Whilst the description of the proposed development on the planning application form does not make specific reference to a rail freight interchange, it was very clear from information submitted with the application that the proposed development entailed utilising the rail connections at the site. The nature of the existing planning permission on the site granted by the Secretary of State and the conditions imposed on it, including relating to rail use were also clear as was the fact that the site was already being used to import gypsum by rail, store it and export it by road.
8. There had been considerable discussions between the Appellant and the Council over a significant period of time before the planning application was submitted. A planning performance agreement was entered into. At no time prior to the application being submitted and indeed subsequently did the Council suggest that the Appellant's proposal constituted an NSIP and the Committee Report of 5 December 2018 explicitly explains that it was not an NSIP. From what I understand, Samuel Smith Old Brewery (Tadcaster) did not raise a concern over this issue when objecting to the planning application and it is not referred to in its statement of case for the appeal.
9. The Council accepted the receipt of the planning application and determined it as such accordingly. The appeal was accepted by the Planning Inspectorate and the Inquiry was programmed accordingly.
10. Given all of this, and notwithstanding the merits of the arguments now put as to whether the proposed development does or does not constitute an NSIP, I find that the Appellant has not behaved unreasonably.

Conclusion

11. For the above reasons I conclude that unreasonable behaviour has not been demonstrated and the application for an award of costs is therefore refused.

Kevin Ward

INSPECTOR