Costs Decision

Hearing Held on 10 December 2019 and 18 February 2020

Site visit made on 18 February 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Costs application in relation to Appeal Ref: APP/Y3425/W/19/3227057
Land off A34, Stone ST15 0PX

- 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 EG Group and Greene King for a full award of costs against Stafford Borough Council.
- The appeal was against the refusal of planning permission for demolition of existing buildings and erection of petrol filling station, canopy and ancillary retail sales and the erection of a drive through restaurant with ancillary parking and landscaping and access off the A34.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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 applicants' application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense, for the reasons considered below.

4. The reason for refusal, as set out in the Council's decision notice is complete, precise, specific and relevant to the application. The reason also clearly identifies what the Council considers to be the harm arising from the proposal with specific reference to local and national policies. This reason for refusal is also supported by an objection from the Highway Authority. These, along with the Council's report and appeal submissions provide an assessment of the proposal and support the reason for refusal. Therefore, the Council's assertions about the impact of the proposal are clear and supported by sufficient technical evidence and analysis.

5. The Council's officer report acknowledges the social, environmental and economic benefits arising from the proposed development. Therefore, it would be unreasonable of me to conclude that the Council did not have regard to these in refusing the applicants' planning application on grounds of highway safety.

6. At appeal, the Council acknowledged that a 'fallback' existed in respect of the extant uses but argued this was not comparable to the proposal with regard to the different uses and clientele that would access it. However, based on the

Council's officer report it does not appear that full regard was given to the fallback in determining the applicants' planning application. Therefore, the Council acted unreasonably in failing to have regard to this.

7. The Council has advised that given its concerns in respect of the safety of pedestrians using the proposed crossing, it could not agree to deal with the proposed off-site works along the gyratory, by way of a planning condition. Such an approach is not unreasonable.

8. The Road Safety Audit Stage 1 (RSA) commissioned as part of the Council's Statement of Case was submitted in accordance with the appeal timescales and I have addressed the acceptability of this in my Decision. Although the appellants argue that the RSA makes no provision for the lawful use of the appeal site including pedestrian and cyclist's movements associated with the extant use, the main purpose of the RSA was nonetheless to review the proposed crossing. Overall, there is nothing in the evidence before me to suggest that the inclusion of the RSA was intended to mislead me or delay the appeal process.

9. I acceded to the Council's request for an adjournment, which was primarily based on the Council wanting the authors of the RSA to review the applicants' late evidence in the form of Technical Note 1 (TN1). As a copy of this was made available to the applicants there was no requirement for the Council to contact or consult with the applicants on this matter, outside the appeal process. Whilst authors of the RSA were not in attendance at the resumed Hearing, the officers representing the Council were able to address issues relating to this. Although there were some delays on the part of the Council in agreeing a date for resuming the Hearing, these were largely due to the relevant officers being on leave.

10. When the Hearing resumed the Council produced late evidence in the form of a written response to the applicants' TN1. However, in light of the brevity of the written response, a very short adjournment on the day was agreed to allow the applicants' representatives to review this. Therefore, I am satisfied that this did not unduly prejudice the applicants and any delay in the appeal process was de-minimis.

11. Drawing on the above reasons, I do consider that the Council acted unreasonably in failing to have regard to the fallback in determining the applicants' planning application. However, to make an award of costs I need to be satisfied that this matter resulted in unnecessary or wasted expense in the appeal process. The fallback position needed to be considered at appeal stage and indeed was discussed at the Hearing and the Council has maintained its reason for refusing the application. I do not therefore consider that the way that the planning application was assessed in itself led to wasted time or expense at the appeal stage.

12. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal

INSPECTOR