
Costs Decision

Site visit made on 20 July 2020

by Paul Singleton BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2020

Costs application in relation to Appeal Ref: APP/F1040/W/20/3246651 75 Derby Road, Hilton, Derby DE65 5FP

- 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 Talbot Turf/Talbot Farm Landscapes for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling (Use Class C3) and nursery buildings (sui generis use) and construction of 9 light industrial/office buildings (Use Class B1c) with the creation of a new access to Derby Road and associated works at Talbot Farm, 75 Derby Road, Hilton.
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Decision

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

Reasons

2. The Government's 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. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example by unreasonably refusing an application or by a failure to produce evidence to substantiate each reason for refusal on appeal.
3. The word "*unreasonable*" in relation to the behaviour of any party is used in its ordinary meaning, as established by the courts in *Manchester City Council v SSE & Mercury Communications Limited*.¹ Unreasonable behaviour in the context of an application for an award of costs may be either:
 - Procedural - relating to the process; or
 - substantive - relating to the issues arising from the merits of the appeal.
4. The application is made on substantive grounds and seeks a full award of costs on the grounds that the refusal of planning permission was unreasonable and that the appeal should not have been necessary.
5. Where decisions on planning applications are made by members of the Council's Planning Committee those members are not bound by the

¹ *Manchester City Council v SSE & Mercury Communications Limited* (1998) JPL 774

recommendations made or advice given by their professional officers. It is open to members to reach a decision contrary to the officer recommendation provided that they set out clear reasons for the decision that they take. There is, therefore, no justification for an award of costs simply on the grounds that the Committee did not follow the officer recommendation or the advice given by the Local Highway Authority.

6. In relation to Reason for Refusal (RfR) 1, reaching a conclusion as to whether the proposal complies with the relevant Local Plan policies requires an assessment to be made of the site's context and surroundings and the effect of the proposal on the character and appearance of those surroundings. This is a matter of planning judgment. In reaching its judgement that the site complements the largely rural character of the land to the north of Derby Road, the Council relies upon the members' assessment of the site's relationship with the open land lying to the north and east.
7. I disagree with that assessment. I also consider that, in forming its view as to the prevailing character of the area to the north of Derby Road, the Council did not give appropriate consideration to the current use and appearance of the site or to the extant planning permission for residential development on the land to the north-west and west. However, I accept that the assessment of that character and the effect of the proposal on it is a matter of judgement. Accordingly, I find that the Council did not act unreasonably in refusing the application on this ground or in its defence of RfR1 in its appeal statement.
8. RfR2 has two parts, the second relates to access visibility splays and the first concerns the possible use of Derby Road to the west of the appeal site by HGVs. In respect of the second part, the clear advice in the highway authority's consultation response was that, following a recent site visit, it was "*evident*" that the necessary visibility splay to the north east, could be achieved over land controlled by the applicant. That is not a matter of planning judgement but of technical advice that the highways officer was best placed to provide to the Committee. That advice was relayed to members in the Officer Report.
9. The members did not have a plan in front of them showing the required splay. However, that omission could easily have been dealt with by means of a planning condition requiring the submission and approval of such a plan. PPG advises that refusing planning permission on grounds that could be dealt with by conditions risks an award of costs where it is concluded that a suitable condition could have allowed the development to go ahead. That is my conclusion in this case. I therefore find that the Council acted unreasonably in refusing the application on that ground.
10. The first part of RfR 2 relates to the Council's concerns that the proposal could result in an increased number of HGVs visiting the site and travelling on Derby Road through the village centre in breach of the weight limit restriction. This issue appears not to have been raised by the local highway authority and was not mentioned in its consultation response. Concerns about a possible future breaching of the weight restriction were among the comments from interested parties as summarised in the Officer Report. However, that matter was not addressed further in the report. I have seen nothing to indicate that the Committee had any information as to what number of HGV movements would be generated by the development or how this would compare with the existing use of the site.

11. On this basis, I am led to conclude that the Committee had no evidence either to inform or support its assertion that the proposal “*would attract a higher number of HGVs and vehicle movements to the site*” as stated in RfR2. In addition, although it may not be incorrect to say that HGVs could freely move to the site through the village, there was no evidence in front of the Committee to indicate that this was likely or that it should be expected. In including this part of RfR 2 in its decision the Council was guilty of making vague or generalised assertions about the impact of the proposal that are not supported by any objective evidence. I therefore find that the Council acted unreasonably in refusing permission on this ground.
12. The statement that the proposal would introduce a greater number of HGVs is repeated in the Council’s appeal statement. Again, no evidence has been submitted to substantiate that assertion or to demonstrate why drivers of HGVs visiting the site would be likely to travel through the village in breach of the weight limit restriction. Hence, no evidence has been presented as to why there should be a need for any measures to control those flows as referred to in paragraph 3.5 of the Council’s appeal statement. This failure to produce evidence to substantiate this part of RfR 2 also amounts to unreasonable behaviour on the Council’s part.
13. I find that the grounds set out in RfR2 were not justified and that a refusal of planning permission on these grounds was unreasonable. I also find that the Council acted unreasonably in its failure to substantiate that reason for refusal in its appeal submissions. As a consequence, the applicant has incurred wasted and unnecessary expense by reason of the need to address and respond to RfR2 in their appeal submission and final comments. A partial award of costs is, therefore, warranted.

Costs Order

14. 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 South Derbyshire District Council shall pay to Talbot Turf/Talbot Farm Landscapes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of the need to address and respond to the second reason for refusal as set out in the Council’s decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to South Derbyshire District 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.

Paul Singleton

INSPECTOR