The Planning Inspectorate

Costs Decision

Site visit made on 18 August 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2020

Costs application in relation to Appeal Ref: APP/W4325/W/20/3246431
Stratton Court, Thursby Road, Bromborough, CH62 3PW

- 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 Miss F Heeley of Lidl Great Britain Ltd for a full award of costs against Wirral Metropolitan Borough Council.
- The appeal was against the refusal of planning permission for erection of a Class A1 retail unit, car parking and servicing areas, access and associated works following demolition of existing buildings.

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 substantiate its reasons for refusal, has attached significant weight to draft policies at an early stage of preparation, has not determined similar cases in a consistent manner, and has raised unsubstantiated concerns regarding the setting of a precedent. Moreover, it is contended that the appellant was encouraged to submit a planning obligation that the Council ultimately considered to be unacceptable.

4. The development proposes a retail use in a designated Primarily Industrial Area and is contrary to Policy EM8 of the Wirral Unitary Development Plan ('UDP') in this regard. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Whilst the appellant submitted detailed marketing and viability evidence, the Council questioned certain elements of this and considered that the 'no reasonable prospect' test at paragraph 120 of the Framework had not been met. Whilst I came to a different view, that is a matter of planning judgement and the Council did not act unreasonably in this regard.

5. The Council drew my attention to emerging policies in its Proposed Submission Draft Core Strategy for the Wirral (2012), which has since been abandoned. However, the Council stated that it intends to carry forward the requirements of draft Policy CS17 into its new Local Plan. Moreover, it's approach to that

policy was based on a recent appeal decision[1] in the Borough. That Inspector attached very limited weight to Policy CS17, although she considered that its criteria were useful in establishing whether there was a reasonable prospect of the site being re-used for employment purposes. The Council did not act unreasonably in following this same approach.

6. It is asserted that the Council acted inconsistently in its handling of the appeal proposal when compared to its approval of a food store on another site within the Wirral Internal Business Park (Ref APP/16/00543). However, the full details of that case, including all of the relevant supporting information, are not before me. I further note that it is some distance from the appeal site and is positioned within a row of non-employment uses including a hotel and a car show room. It is therefore unclear to what extent that approval is directly comparable to the current proposal. With regard to the recent approval at Dock Road South (Ref APP/19/00941), this related to a smaller site in a less prominent location. Moreover, the Officer Report notes that its deep plan configuration made it difficult to re-let for office uses, which does not apply here. Separately, the full details of the other cases highlighted by the appellant are not before me. I am therefore unable to conclude that the Council acted unreasonably in this regard.

7. It is further asserted that the Council relied on an outdated version of the Framework, which advised that planning decisions should recognise and address the specific locational requirements of different sectors. However, it is not clear that the Council refused permission on this basis. Instead, both its Officer Report and Appeal Statement refer to the 'no reasonable prospect' test within the current version of the Framework, which is clearly of relevance to this appeal. Accordingly, I do not consider that the Council acted unreasonably in this regard.

8. Whilst the Council's Decision Notice refers to section 7 of the Framework, neither the Officer Report nor the Council's Appeal Statement allege any conflict with town centre policies. Accordingly, this reference is likely to have been an error. In any case, I note that this matter is addressed only briefly at paragraph 3.6 of the appellant's Statement, and so significant expense has not been incurred in this regard.

9. The Council also stated that the development could set an undesirable precedent for the introduction of other non-employment uses within the Wirral International Business Park. However, this was not an unreasonable position to take given that in its view the submitted evidence had failed to demonstrate 'no reasonable prospect' of the site being used for employment purposes.

10. The appellant states that the Council encouraged the submission of a planning obligation to overcome its concerns regarding loss of employment land. However, the Council was subsequently advised that such an obligation would not meet the relevant legal tests, and I have similar concerns in this regard. I further note that the Council's most recent email to the appellant on this matter (dated 3 February 2020) is tentative in nature and refers only to a 'possible' business grant scheme. Based on the evidence before me, I do not consider that the Council acted unreasonably in this regard.

[1] APP/W4325/W/16/3154827

11. Separately, a number of other points that are raised relate to the Council's conduct at application stage. However, PPG is clear that costs can only be claimed for the period of the appeal itself[2]. Accordingly, these matters are not eligible for an award of costs.

12. 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

[2] Paragraph references: 16-032-20140306 and 16-033-20140306