The Planning Inspectorate

Costs Decision

Site visit made on 20 October 2020

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 10 November 2020

**Costs application in relation to Appeal Ref: APP/E2530/W/20/3249826
Land adjacent to the A15/A1175 Roundabout, Peterborough Road, Market Deeping**

- 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 BP Oil UK Ltd for a full award of costs against South Kesteven District Council.
- The appeal was against the refusal of planning permission for the erection of roadside services to include a petrol filling station with ancillary retail floor space.

Decision

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

Reasons

2. Planning Practice Guidance 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 expense in the appeal process. In this instance, the applicant refers to the Council's failure to produce substantive evidence to support each reason for refusal on appeal, together with assertions about the proposal's impact which are unsupported by any objective analysis.

3. Firstly, I have noted that the Council's Officers consistently recommended the proposed development for approval on the three occasions on which the planning application was heard by the Planning Committee. However, the decision is primarily a matter of judgement. The Council Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view. The reasons for refusal (RFR) as set out in the decision notice are complete, precise, specific and relevant to the application, and the decision clearly states the conflict with the policies of the former Core Strategy as well as national policy.

4. In respect of RFR 1, the Council was acting reasonably in taking a plan-led decision making approach in terms of development in the countryside. It decided that the proposed development did not meet any of its criteria in terms of the type of development that would be acceptable in the countryside and an essential need was not adequately demonstrated. However, its assertion that more suitable and sustainable locations should have been considered lacks a firm Policy basis because a PFS is sui-generis; not an employment or a town centre use. The indication that the appeal proposals would be an alternative

retail destination is not misleading, but it is without credible foundation in terms of Policy support.

5. The retail element of the scheme was agreed to be ancillary to the main use of the development as a PFS, and the Council did not require a sequential approach nor a retail impact assessment for it. The need for the development was also not in dispute. Their preference for an alternative site, which is not allocated for such use, has been largely unsubstantiated. The issues which relate to additional alternative sites suggested by the Council are similar to that already dealt with by the applicant at planning application stage, therefore I do not consider there has been unnecessary or wasted expense.

6. The Council has not misrepresented RFR 2 in relation to character and appearance. This main issue covers both the impact of the development upon the landscape as well as an assessment of whether it is out of keeping with the rural character and appearance of the area. Such issues had been raised by third parties so it was reasonable for the Council to seek to address them. A potentially misleading title of the landscape documentation is not a sufficient basis for claiming unreasonable behaviour. Notwithstanding any lack of detail in matters of landscape impact, the Council were entitled to make submissions that the evidence provided by the applicant was insufficient to support making an informed planning decision.

7. RFR 3 states that the development would discourage sustainable forms of travel such as walking or cycling. Highway safety was not in dispute. An individual's perception of a 'convoluted' route will vary, therefore this is a matter of judgement. Indeed I found on my site visit that the route does involve crossing the road a number of times with varying degrees of difficulty. The Council asserts that the retail sales area would generate non-vehicular traffic, and therefore sustainable modes of transport should be encouraged. However the proposed development is primarily a PFS; to serve passing vehicular traffic. In this respect that the Council has relied partly on assertion and failed to produce sufficient evidence to substantiate RFR 3. Nonetheless, it was not an onerous task for the applicant to rebut the Council's case on this point. As such I find that there has not been unnecessary or wasted expense.

8. Specific Policies were referred to by the Council from the recently adopted Local Plan. There was some disagreement about the specific criteria in Policy E8, but for the reasons given in my decision the appeal does not rest on this particular Policy, and as such any failure to produce evidence in respect of a specific part of that Policy is not unreasonable behaviour.

Conclusions

9. Overall, whilst not as comprehensive as the applicant's submissions, the Council's case gives adequate evidence to support its reasons for refusal. There is no requirement for them to provide a detailed response to every piece of evidence. The reasons for refusal primarily relate to matters of judgement and the Council was not unreasonable in coming to its decision contrary to the recommendations of its Officers. I have found that in some instances the Council's evidence has not fully substantiated the reasons for refusal or rebutted the applicant's evidence, and some vague assertions have been made. However in the main there has been a legitimate Policy basis for their case.

10. The applicant has carried out additional reports and assessments over and above what they had submitted for the planning application submission. This is usual practice and necessary in order to rebut the reasons for refusal and as such does not represent wasted expenditure.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Consequently, no award of costs is made.

Susan Hunt

Inspector