



Costs Decision

Hearing Held on 25 November 2020

Site visit made on 26 November 2020

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2020

Costs application in relation to Appeal Ref: APP/T0355/W/20/3251178 Oak Tree Farm (rear of), Gays Lane (off Green Lane), Maidenhead SL6 2HL

- 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 The Chairman, Martin Bicknell, Maidenhead Target Shooting Club for a full award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
 - The hearing was in connection with an appeal against the refusal of planning permission for relocation of Maidenhead Target Shooting Club from Braywick Park including creation of car park, erection of clubhouse and toilets, shooting stands, bunds, fencing, landscaping and planting etc with access off Green Lane.
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Decision

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

Procedural Matter

2. The costs application was submitted in writing, and no additional points were made at the hearing. The Council's response, and the applicant's final comments were made in writing after the hearing was closed.

Reasons

3. The Planning Practice Guidance (the PPG) 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. The application for an award is based on procedural and substantive grounds. Procedurally, it is claimed that, in determining the application, the Council failed to properly apply national planning policy that supported the development. Substantively it is argued that the reason for refusal was not supported by evidence, to the extent that the appeal should not have been necessary.
5. The PPG indicates that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, or if they fail to produce evidence to substantiate each reason for refusal on appeal.

6. It is agreed in the Statement of Common Ground that the Council's report made no reference to paragraph 146 of the National Planning Policy Framework (the Framework). However, Para 1.2 of the report said that "*the proposed development does not fall within the list of specified exceptions for development set out in Paragraphs 145 or 146 of the National Planning Policy Framework (revised 2019) and therefore constitutes inappropriate development*". Members were therefore aware that exceptions were not limited to Paragraph 145.
7. The omission of further analysis of Paragraph 146 under sections 9.2 to 9.8 of the report would have been significant, had the application only been for a material change of use. However, the application specifically included a range of buildings that were required to bring about the change of use. It was the buildings that gave rise to the Council's concerns about the openness of the Green Belt, rather than the use itself. It was, therefore, appropriate that the report concentrated on the requirements of Paragraph 145, that relates to buildings. In any event, the exemptions under paragraphs 146 (for change of use) and 145 (for construction of appropriate buildings) both require that the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The Council did not, therefore, misapply national policy in concluding there would be harm to openness as a result of the development.
8. The applicant argues that the Council was unreasonable, in failing to accept that the proposal was a like for like replacement for that which previously existed in the Green Belt. However, the Council provided cogent evidence that the previous site was more closely related to urban development, so did not have such a visual impact on openness as the development on the appeal site would. I came to the same conclusion in my decision, so do not find the Council's approach to considering this issue unreasonable.
9. It is also claimed that the Council should have given greater weight to the applicant's financial circumstances, when considering the availability of alternative sites. The weight to be given to material considerations is a matter for the decision-maker. I concluded that high rents and short leases were justifiable reasons for a not-for-profit organisation to reject potential sites. However, in view of the lack of detailed information to support the reasons for rejection, it was not unreasonable for the Council to conclude differently.
10. The applicant suggests that the Council's refusal arises from local opposition to the scheme, rather than a consideration of the appropriate planning issues. The Officer's report correctly refers to the objections raised by residents, and comprehensively considers, on an issue by issue basis, whether those warranted reasons for refusal. It was concluded that, despite the many other matters raised in representations, it was only the impact on the openness of the Green Belt that justified a reason for refusal. I therefore find that the Council's approach to considering representations was reasonable.
11. In the applicant's final comments, it is claimed that, the Council recognised the value of the club, but no weight was given to that matter in the overall decision, which was unreasonable. However, the Officer's report clearly stated that "*considerable weight should be given to the sporting benefits of the proposal*". In the overall balance, however, the Council concluded that the harm to the Green Belt was not clearly outweighed by other considerations. In

my decision, I attributed significant weight to the sporting and community benefits of the development, and came to the same overall conclusion. I do not, therefore, find any unreasonableness in the way the Council balanced the benefits and harm of the proposal.

12. The PPG says that, where a local planning authority has refused a planning application for a proposal that is not in accordance with development plan policy, and no material considerations, including national policy, indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. In my decision, I concluded that the development was contrary to Local Plan policies, insofar as they were consistent with national policy, and that very special circumstances did not indicate that permission should be granted. In coming to this conclusion, I found the Council's reason for refusal to be well-founded, and supported by the evidence.
13. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR