



Costs Decision

Site visit made on 23 November 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Costs application in relation to Appeal Ref: APP/C1760 /W/20/3255627 Land At Sleepy Hollow Farm, Ampfield Hill, Ampfield SO51 9BD

- 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 Rivendale Homes Ltd for a full award of costs against Test Valley Borough Council.
 - The appeal was against the refusal of planning permission for the erection of office building (B1).
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. In summary, the applicant seeks a full award of costs on the basis that the Council has acted unreasonably as it has prevented development which should clearly have been permitted having regard to the development plan, national policy statements and other material considerations. Additionally, the Council has not produced evidence to substantiate the reasons for refusal, making only generalised criticism without any detailed appraisal of the scheme which has resulted in inaccurate assertions on the impacts of the proposal.
4. In particular, it is argued that the Planning Policy Officer was supportive of the proposal and not only was his advice ignored but it was unfairly summarised in the Planning Report. The acceptability of the principle of the development was wholly a planning policy issue and the planning report demonstrates an overall strong bias against the scheme.
5. The conclusion that the scheme is contrary to Policy LE17 of the Test Valley Borough Revised Local Plan 2011-2029 (the Local Plan) based on the employment building being outside the lawful employment site is erroneous and contrary to well-established case law, confirmed in the legal opinion.
6. It is also argued that the Council gave undue weight to their Landscape Officer's response, who did not consider the landscape character impact of the proposal against any established guidance and that the site is not visible along the majority of the right of way. This was not a professional response in accordance with the approach set out by the Landscape Institute. The

Landscape Officer went beyond the remit of landscape advice and took no account of the planting that had taken place.

7. It is further argued that the Council failed to give appropriate weight or even mention the strong support in the National Planning Policy Framework (the Framework) relevant to employment uses within rural areas, and alongside the Planning Policy Officer's response, this should have led to an approval of planning permission.
8. The Council did not consider whether planning conditions or a legal agreement would address the harm or seek agreement to the removal of permitted development rights to prevent further development.
9. The applicant has explained that the decision was taken against the backdrop of the economic circumstances of the Covid-19 pandemic and the need to support local businesses and economic output. The building would be the base for the applicant's SME and thereby support a successful business to expand. The overtly negative behaviour that focused on ways to refuse the application for a much needed employment building, which had no material detriment to the landscape character of the area, was unreasonable. This has resulted in unnecessary and wasted expense, and delay with the provision of a much needed employment contract, employment and an employment building located in a sustainable area.
10. The inclusion of the further comments of the Landscape Officer and the Parish Council, objecting at the appeal stage when it raised no objection at the application stage, is further evidence of unreasonable behaviour.
11. The Council has responded that the claim for costs relate solely to matters which occurred during the determination period and refute any claim that it acted unreasonably. During the processing of the application the applicant failed to demonstrate policy compliance and therefore the refusal was not unreasonable.
12. The case is made that the Planning Report assessed all the critical material planning considerations, following legal advice on the planning history and its significance, and came to the conclusion that the proposal was not within the lawful employment area.
13. It is explained that the advice of the Planning Policy Officer did not critically assess the proposal, but rather advises that information has been submitted which would suggest compliance with Policy LE17 of the Local Plan and that the response was a summary of the policy text rather than a suggestion that the proposal is policy compliant. The Council explain that the Landscape Officers are fully qualified to comment and their focus is in analysing proposals against Policy E2 of the Local Plan.
14. The Council argue that the justification for development being policy compliant is based on an unsupported and unjustified assertion that the site in question and wider site is a lawful B class use. The case is made that this is factually incorrect and supported by no evidence. Indeed, the aerial photograph and the appellants own evidence clearly indicates that the land is undeveloped and only used for agricultural purposes. Consequently, it is argued that the Council's reason for refusal is well founded and there is no unreasonable behaviour.

15. In looking at these issues, the Guidance explains that all parties are expected to behave reasonably throughout the planning process although costs can only be awarded in relation to unnecessary and wasted expense at the appeal stage¹. I have noted the arguments of the applicant, however, these predominantly concern how the Council processed the proposal at the application stage rather than its conduct at the appeal stage.
16. Emphasis is placed on the fact that the Planning Policy Officer raised no objection to the proposal in terms of Policy LE17 of the Local Plan. This Officer, however, comments in the advice that "the supporting statement of the proposal states that the site is situated in close proximity and within the same planning unit as the two existing industrial workshop units, which have permission and have commenced on demolishing and replacing it with a new building comprising 5 office units". The Policy Officer had, it seems to me, therefore assumed, based on the submission of the applicant, that the site would be contained within a lawful employment area. I consider that this has not been conclusively demonstrated and therefore the analysis that led to a "no objection" from the Planning Policy Officer needs to be understood in this context and was not determinative.
17. The Planning Report looked at this matter in greater detail, following legal advice, and came to the conclusion that the site lay outside the lawful employment site. This allowed a different conclusion to be reached on the application of Policy LE17. This was not an unreasonable approach although I make no judgement on the actual conclusion. It was open for the applicant to seek to demonstrate through a certificate application that the lawful use of the site fell within the planning unit of the original business activities and this would have resolved the issue. I have found that there is uncertainty over this matter and that it is not the role of a section 78 appeal to determine lawfulness in this case.
18. In terms of the landscape impact, I have noted the criticisms of the Council's specialist officers in this regard, however, it will be seen that I largely agree with their conclusions. The reason for refusal was well founded in this respect and this does not amount to unreasonable behaviour.
19. The inclusion of the additional comments from the Landscape Officer at the appeal stage are not unreasonable to supplement the Council's evidence. I have noted the changed position of the Parish Council through the application and appeal process and this is a matter for it rather than the Local Planning Authority.
20. The Planning Report does not make a clear reference to the economic benefits which would accrue from the proposal or reference the supportive elements of the Framework. An appropriate reference and detail would have helped demonstrate that these matters had been fully considered. Nevertheless, as it will be seen from the appeal decision, given the policy objections and the landscape harm, the scheme would not comply with the development plan when considered as a whole and material considerations do not justify a decision otherwise. Consequently, the conclusion of the Council to refuse the proposal was justified in this case.

¹ Behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

21. As a result, it follows that in terms of the issues raised by the applicant in the costs claim that relate to the appeal process, I cannot agree that the Council has acted unreasonably in this case and the appeal could not have been avoided. Accordingly, the appellant was not put to unnecessary or wasted expense.

Conclusion

22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR