
Costs Decision

Site visit made on 5 January 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

**Costs application in relation to Appeal Ref: APP/X0360/W/20/3258638
Land at Carney's Yard, Opposite Pulleys Transport Yard, Church Lane,
Three Mile Cross, Reading RG7 1HB**

- 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 Mr Sean Carney of J Carney Construction Ltd for a full award of costs against Wokingham Borough Council.
 - The appeal was against the refusal of planning permission for the temporary use of land for the storage of building equipment for a period of 3 years.
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Decision

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

Reasons

2. 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 expense in the appeal process.
3. The applicant considers that the Council behaved unreasonably in failing to permit development similar to that permitted on adjoining land under reference 193248 (the SSE depot). He considers that this was a material consideration of very substantial weight and the Council did not mention it in their delegated report for the appeal proposal. As such, the Council unreasonably prevented development that clearly ought to have been permitted. He contends it also demonstrated an inconsistent approach to similar cases.
4. In addition, it is the applicant's view that the Council relied on refusal reasons pertaining to the character of the area, highway safety, amenity, ecology, drainage and flooding that were based on generalised concerns rather than objective analysis. Furthermore, suitable conditions could have been used to allow the development to proceed.
5. Finally, the applicant considers that the Council unreasonably withheld requested information and prevented dialogue during the course of the application. It is his view that a more helpful approach would have allowed further information and clarification to take place that would have avoided the appeal altogether.
6. The PPG gives examples of unreasonable behaviour where local planning authorities are at risk of an award of costs. This includes the following:

- Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - Not determining similar cases in a consistent manner.
 - If they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.
 - Refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
7. It will be seen from my determination that I found that the proposal conflicted with the development plan and national policy in relation to the location of the proposal, the impact on the character and appearance of the area and floodrisk and drainage. It follows that it is not the case that the development should clearly have been permitted having regard to its accordance with the development plan and national policy. I acknowledge that the development at the SSE depot was a relevant consideration. The delegated report for the appeal proposal mentions the SSE depot application twice but states that the application was currently under consideration and that each application must be assessed on its own merits.
8. This is consistent with the dates of the respective decisions whereby the appeal proposal was refused on 20 May 2020 and the SSE depot decision was approved on 26 May 2020. At the time the Council made its decision the SSE depot had not been approved and so it could not reasonably have been expected to give very substantial weight (or otherwise) to a decision that had not yet been made.
9. Nevertheless, both applications were before the Council concurrently and the committee report provided for the SSE depot decision recommending approval indicates the committee date was 21 May 2020. It seems highly likely that this report at least existed, and may have been published, around the same time the delegated decision for the appeal proposal was taken. Given that the applicant had expressly referred to it in his submission as being similar, it would have been helpful if the Council had provided a fuller explanation of why they considered the merits of the respective applications to be different. This was compounded by the absence of any reference to the recent refusal of the applicant's development in the committee report for the SSE depot and it is understandable why the applicant feels aggrieved. Nevertheless, I am not convinced that this amounts to unreasonable behaviour as described in the PPG.
10. The subsequent correspondence between the parties on this matter provided an opportunity for the Council to explain its approach to the two cases. It is reasonably clear from the committee report and this correspondence that the Council gave considerable weight to the status of the user of the SSE depot as

- a statutory undertaker and that they were satisfied that electricity infrastructure work undertaken by them justified the location of the proposal. Furthermore, a shorter 2 year temporary consent was sought. Accordingly, there were differences between the two applications that meant the schemes were not identical as is asserted by the applicant. The weight to be attributed to the respective circumstances in any given case is a judgement for the decision maker. The appeal procedure provided an opportunity to test the weight that ought to be given to the merits of the applicant's case.
11. The reasons for refusal set out in the decision notice are reasonably specific and relevant to the application and each one identifies which policies in the development plan the Council considered to be most relevant. Moreover, the Council sought the views of the Drainage Officers, Highway Authority, Environmental Health Officer and Ecology Officer. The views of these specialist bodies informed its consideration of the respective planning merits of the proposal and subsequent reasons for refusal. Additionally, the concerns of the Council regarding the impact on the character and appearance of the area were adequately substantiated by the Council in its delegated officer report that identified the characteristics of the site and outlined the nature of the harm. It follows that I am not persuaded that the Council acted unreasonably in this regard.
 12. It will be seen from my decision that, in relation to some of the main issues, planning conditions could have reasonably addressed the concerns raised by the Council. However, notwithstanding that as part of the appeal process further ecological survey information has been provided in relation to the potential impact upon protected species, advice in Circular 06/2005 Biodiversity and Geological Conservation states that the presence of protected species and the extent that they may be affected should be established before any planning permission is granted. Accordingly, based on the limited survey information provided to the Council as part of the planning application, this was not a matter that could have been made the subject of a condition based on the information submitted to them.
 13. In any event, other substantive concerns remained where it was not demonstrated that otherwise unacceptable development could be made acceptable through the use of planning conditions. Hence, it is not shown that had the Council used suitable conditions it would have enabled the development to go ahead, thereby avoiding the necessity of an appeal.
 14. The National Planning Policy Framework encourages early engagement in the planning process and states that applicants should discuss what information is needed with the local planning authority and expert bodies as early as possible. Paragraph 47 stipulates that decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period is agreed in writing with the applicant.
 15. The information presented indicates that the applicant did not request pre-application advice as concerns are raised regarding the cost and time involved. Nevertheless, some policies in the development plan specify the type of information upon which an application should be assessed. For example, policies CC06 and Appendix 1 of the Wokingham Borough Development Plan, Managing Development Delivery, Local Plan, February 2014 (MDD) set out how proposals should demonstrate the consideration of noise. Furthermore, policies

CC09 and CC10 of the MDD refer to the circumstances where a Flood Risk Assessment or drainage strategy should be provided.

16. The applicant was advised during the planning application that in order to meet the time constraints for determining planning applications, the Council had a policy of not giving out the names of case officers and that planning officers will only get in touch if further information is required. Therefore, dialogue with applicants once a planning application is submitted will not necessarily occur. This is an operational matter that is within the discretion of the Council. Whilst this may not be ideal customer practice, having regard to the wider context whereby there was an opportunity to engage in pre-application advice, it does not constitute unreasonable behaviour within the meaning of the PPG.
17. Unlike the SSE depot application, the Council had substantive concerns with the location of the appeal proposal. Therefore, requesting further information in relation to the matters of highway safety, noise, ecology, flood-risk and drainage would have been unlikely to have led to a different outcome. Hence, it is not shown that a different approach would have avoided the appeal altogether as the applicant suggests. Moreover, to have done otherwise would have put the applicant to further expense when there was little prospect of it altering the ultimate decision. Accordingly, the Council did not act unreasonably in this regard.

Conclusion

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Helen O'Connor

Inspector