

Costs Decision

Site visit made on 12 January 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2021

Costs application in relation to Appeal Ref: APP/P0240/W/20/3260426 Units 3, 5 and 7 Ivel Road, Shefford, Bedfordshire SG17 5JU

- 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 Mrs Nohra Currie, Monogram Technologies Ltd for a full award of costs against Central Bedfordshire Council.
 - The appeal was against the refusal of planning permission for demolition of 2 no. existing industrial units and proposed construction of 9 no. dwellings with 26 parking bays and the regeneration of existing unit.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. Local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour include failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions which are unsupported by any objective analysis; and 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
3. The Council's report to Committee on the planning application recommended that permission should be granted. The report records that the Council's Pollution Officer (PO) was satisfied with the findings of a submitted noise impact assessment, and advises that subject to a condition recommended by the PO to secure mitigation measures, future occupiers would not be subject to harmful levels of noise and that living conditions would be acceptable.
4. The Committee was not bound by the advice of its professional officers and was entitled to exercise planning judgement to reach a different conclusion on the merits of the proposal. Nevertheless, that fact does not absolve the Council of the requirement to provide sufficient evidence to properly substantiate its decision.
5. The Council suggests that the reason for refusal was explained adequately during the Committee meeting and within the decision notice, and comments that the applicant's representative was present for the meeting and had a subsequent telephone conversation with officers. Be that as it may, I can only rely on the evidence that is before me. I have been provided with the

Committee minutes. While these state that the Committee received representations and sought clarification if necessary from speakers, they provide no indication of any discussions which led to the resolution to refuse permission so as to help clarify the basis of the Committee's concerns.

6. Very little other information has been put forward by the Council in support of the reason for refusal. It comments that activity and comings and goings, including by large vehicles, associated with adjacent businesses results in a significant level of noise. However, this is not corroborated by any objective information and seems to me to be little more than an unsupported assertion. Moreover, the Council has offered no compelling evidence to challenge the methodology of the applicant's 'Measurement of Environmental Noise' report or to call into question the robustness of its findings that noise levels would not be excessive or require special mitigation to achieve relevant guidelines.
7. In this context, the basis for concern that living conditions for future occupiers would be unsatisfactory or that mitigation would be required beyond that which could be secured by a planning condition as advised by the Pollution Officer is far from clearly evidenced. Linked to this, the Council has also not justified how the proposed dwellings would place restrictions or unreasonable constraints on the operations of existing uses. Accordingly, there is no clear reason to deviate from the recommendation within the Committee report. I find that the information before me falls far short of demonstrating a conflict with the provisions of the development plan and the National Planning Policy Framework which are cited within the reason for refusal, and I consider that the Council has failed to provide sufficient evidence to substantiate its reason for refusal.
8. The Council has therefore acted unreasonably by delaying development which should have been permitted. As a result, it is readily apparent that the applicant has incurred unnecessary expense associated with pursuing the appeal. While precise costs have not been specified, the PPG confirms that it is the principle of whether costs should be awarded that is relevant and not the amount which would be settled subsequently between the parties.
9. For the reasons above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Central Bedfordshire Council shall pay to Mrs Nohra Currie of Monogram Technologies Ltd the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Central Bedfordshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Bowyer

INSPECTOR