
Costs Decision

Site visit made on 8 December 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Costs application in relation to Appeal Ref: APP/K2420/W/20/3258978 Land East of Higham Lane, Stoke Golding CV13 6JH

- 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 N Aponso, Nilz & Harley Pet Services, for a full award of costs against Hinckley & Bosworth Borough Council.
 - The appeal was against the refusal of planning permission for erection of building and change of use of land to form a dog day care centre.
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Decision

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

Procedural Matter

2. Although the appellant does not state whether they are applying for a partial or full award of costs, my understanding derived from the costs application and appeal documents is that the appellant has applied for a full award of costs. Notwithstanding, I have also considered whether a partial award would be justified.

Reasons

3. Irrespective of the outcome of an appeal, the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
4. In summary, the applicant considers an award of costs is justified as they are of the opinion that:
 - i) the Council rejected requests to meet the appellant on site to discuss the application, eg changes to the site and the application from previous submissions, the car parking area, boundary treatment and permissions 18/00353/FUL & 17/00117/COU;
 - ii) the Council pre-judged the proposal based on the site history; there was a lack of objectivity and meaningful engagement demonstrated by the Council in relation to the policy context and recent planning history of the site, which led to the Council issuing a misdirected and unreasonable

- refusal when further negotiation and discussion was offered by the appellant throughout the determination period;
- iii) the Council relied on/attached too much weight to opposition by third parties, and assertions about the effect of the proposal were unsupported by objective analysis;
 - iv) the reason for refusal is unsubstantiated and based on non-material third party local opposition and the misapplication of Policies DM4 and DM10;
 - v) conditions could have overcome concerns;
 - vi) the Council acted against the spirit of Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 38 of the Framework, and
 - vii) the Council has delayed development which should have been permitted, having regard to the development plan, the Framework and other material considerations.
5. I acknowledge that the Council did refuse a site meeting. However, as Officers of the Council had visited the site on several occasions, all-be-it related to other applications, had previously communicated with the appellant and dealt with other applications on the site, I consider that other means of communication would have been sufficient in this instance for parties to gain an understanding of the issues and each other's perspectives regarding the proposal.
6. Being aware of the site history and considering it does not mean that the Council pre-judged the proposal. I appreciate the appellant was evidently frustrated at not being able to have a site meeting; and I consider that the Council could have explained the material differences between the proposal and approved applications 18/00353/FUL & 17/00117/COU more clearly to the appellant. However, I believe such matters have not led the Council to issuing a misdirected and unreasonable refusal.
7. The Council is obliged to take account of third-party representations. Additionally, I note that the weighting the Council attaches to any representations, consultee comments and/or submitted reports received in respect of an application is a matter for its judgement. Nevertheless, the evidence does not lead me to conclude that the Council attributed undue weight to representations it received.
8. From my reading of the Council Officer's Report, alongside the Decision Notice, I consider the reason for refusal is clearly outlined and I consider policies DM4 and DM10 to have been applied appropriately.
9. Having concluded myself that the appeal should be dismissed, I do not consider conditions could overcome the harm identified.
10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires determinations under the planning Acts to be made in accordance with the development plan unless material considerations indicate otherwise. Paragraph 38 of the Framework advises that local planning authorities should approach decisions on proposed development in a positive and creative way...and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at

every level should seek to approve applications for sustainable development where possible.

11. Again, I concluded that the proposal does not accord with development plan policies and that there are no other material considerations, including policies in the Framework, that indicate that the decision should be made otherwise than in accordance with the development plan. As such, I consider the Council has adhered to Section 38(6) of the Planning and Compulsory Purchase Act 2004. Regarding paragraph 38 of the Framework, the Council was clearly of the view that there were no means by which the proposal could have been made acceptable.
12. Bearing in mind my decision on the appeal and the matters discussed above, I conclude that the Council has not delayed development which should have been permitted.
13. I therefore conclude that it has not been demonstrated that the Council behaved unreasonably in respect of procedural or substantive matters associated with the determination of application Ref 20/00570/FUL. Consequently, there has not been any unreasonable behaviour which caused the applicant to incur unnecessary or wasted expense in the appeal process, as described in the PPG. Therefore, an award of costs is not justified.

J Williamson

INSPECTOR