
Costs Decision

Site visit made on 22 February 2021

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2021

Costs application in relation to Appeal Ref: APP/W4223/W/20/3263446 KS Oils Ltd, Green Lane, Failsworth, Manchester M35 0PP

- 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 Kevin Smith (KS Oils Ltd) for a full award of costs against Oldham Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission to remove condition 2 relating to app no. PA/340564/17 to allow reopening of access and retention of parking area.
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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 parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The application for an award of costs is made by the appellant on substantive grounds. It is argued that the Council have prevented and delayed development which should clearly have been permitted having regard to the development plan, national policy and any other material considerations. The applicant also claims that the Council failed to produce evidence to substantiate the reason for refusal and made inaccurate assertions about the proposal that are unsupported by objective analysis. The PPG indicates that, in such circumstances, costs may be awarded against an authority.
4. The planning application had a single reason for refusal which related to the impact the continued use of the new access would have on highway safety. The new access is used solely for vehicles to enter the site and the Council's evidence is that the access aids this process. As such, it is not detrimental to highway safety.
5. The Council's concerns relate not to vehicles using the new access but to vehicles exiting the site from the original access. It is not disputed that large vehicles exiting from the site have to overrun the centre line of the carriageway to turn left. However, such manoeuvres form part of the agreed plans from when the use was first granted permanent planning permission and would continue to take place irrespective of whether the continued use of the second

access was allowed. This fallback position is clearly a material consideration, but little weight has been given to it in the Council's evidence.

6. In support of their arguments regarding vehicles exiting the site the Council have provided photographic evidence which shows a tanker turning right, not left, out of the site. Whilst I accept this appears to show the tanker having difficulty performing this manoeuvre, this represents a single example over a two year period between the new layout being implemented following the approval of temporary planning permission and the Council determining the application for planning permission to use the revised layout and new access on a permanent basis.
7. Despite indicating that the delay in processing the application was to enable additional assessment of the site to take place, I have been provided with no other details from the Council about when and how they have monitored and assessed movements into and out of the site and what was seen on these occasions.
8. As such, the Council's conclusions appear to be based on a single instance and because this vehicle turned right, they have argued that tankers are unable to turn left from the site. However, no account seems to have been taken of the evidence to the contrary supplied to them by the appellant. This includes records of each delivery, as well as swept path analysis diagrams to show how, in theory, vehicles can turn left out of the site and photographs to show in practice tankers turning left out of the site on a number of different occasions. As such, the Council's reasoning appears to be based on inaccurate assertions rather than objective analysis.
9. The Council have highlighted that the swept path analysis shows that vehicles turning left will overhang the carriageway boundary. Be that as it may, they have not substantiated how this would result in any highway or pedestrian safety issues bearing in mind there is no pavement on that side of the road only a vegetated bank.
10. In addition, the Council have suggested that due to the fact that they consider turning left out of the site is not possible, tankers may use the second exit to reverse out of the site. Whilst stating the plans show this would not be the case, the applicant has highlighted that the Council's concern could be addressed by imposing a condition. Despite suggesting this would be difficult to enforce and might not meet the tests for conditions set out in the *National Planning Policy Framework* (the Framework), the Council's suggested conditions submitted with the appeal, do in fact include a condition to control what movements can take place at each access and preventing vehicles from reversing out of the site. I see no reason why this cannot be enforced or fails to meet the Framework's tests for conditions.
11. The applicant has highlighted that the Council took in excess of a year to determine the application. Whilst I appreciate his annoyance at this, he could have appealed earlier against a failure to determine the application, and in the meantime the site has been able to continue to operate using the two accesses.
12. All in all, in failing to give due consideration to the fall back position, relying on inaccurate assertions, and not substantiating their reason for refusal, I consider that the Council has not given proper consideration to the planning application

and so has acted unreasonably. Whilst the business has continued to operate at the site using both accesses during this time, this unreasonable behaviour has resulted in the unnecessary expense for the applicant in having to pursue the appeal.

13. Therefore, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated, and thus an award of costs is justified.

Costs Order

14. 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 Oldham Metropolitan Borough Council shall pay to Mr Kevin Smith (KS Oils Ltd), the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Oldham Metropolitan Borough 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.

Alison Partington
INSPECTOR