
Costs Decision

Site visit made on 16 February 2021

by J Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 8th March 2021

Costs application in relation to Appeal Ref: APP/C1760/W/20/3262592 Bottom Lane Farm, Maurys Lane, West Wellow, ROMSEY, SO51 6DA

- 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 Skyfield Estate LLP for a full award of costs against Test Valley Borough Council.
 - The appeal was against the refusal of planning permission for an agricultural access track.
-

Decision

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

Reasons

2. The application for costs was made in writing within the prescribed period. The application is for a full award of costs.
3. The applicant contends that the Council has behaved unreasonably through: a lack of co-operation; delaying the release of important information; by the lack of an opportunity to address comments raised in the officers report; through inconsistencies within the officer report; through the misdirection of the application of Policy COM2; and by the inclusion of reference to unconnected policies T1 and T2 in the decision notice. The applicants say that they have been put to unreasonable expense in submitting and pursuing this appeal when the proposal is appropriate when measured against the development plan and section 38(6) of the Planning and Compulsory Purchase Act 2004. They argue the determination should have been made in accordance with the development plan.
4. The Planning Practice Guidance (PPG) makes it clear 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 process¹.
5. The applicant sought to have a dialogue with the Council in relation to matters which required consideration. Their letter of 23 April 2020 set out a range of matters and the Council responded shortly thereafter with a request for an extension of time. No further exchange from the Council was made. In their costs response the Council argue that further time had not been requested by

¹ Paragraph: 030 Reference ID: 16-030-20140306 National Planning Practice Guidance

- the applicant to submit further information. They suggest it was the appellant who requested a prompt decision.
6. I note this exchange took place four months after the submission of the application and shortly after the applicant received the landscape comments. The Council proceeded to a formal decision without further communication with the applicant nor having given any substantive response to their email of 23 April 2020, even though this included matters relating to the earlier appeal decision and the potential fall-back position. This appears, on the face of it, to have been unreasonable.
 7. The applicant states that the Council did not upload the landscape officers comments to the website in a timely manner. The Council advise that this situation arose from an administrative error which was corrected as soon as it was brought to their attention. Whilst I have nothing before me to suggest that this error was deliberate, it disadvantaged the applicant. This is because it hindered any opportunity to respond to, or address concerns in the short period of time between it being made available and the decision being issued.
 8. It is not usual practice for an applicant to be given an opportunity to raise comments on an officer report prior to its issue. Nonetheless the applicant could have sought the Councils' view after the decision and prior to lodging an appeal to establish if matters could be overcome. I have no evidence before me to suggest that they sought such advice post decision but this does not demonstrate unreasonable behaviour during the appeal process.
 9. The applicants point to inconsistencies in approach in that the decision was made on the basis of adverse landscape impact when the Landscape officers comments were neutral. The Council say that in the absence of a landscape and visual appraisal the officer had to exercise subjective judgement and that this was backed by evidence to support that argument.
 10. As will be seen from my appeal decision I have reached a different conclusion. The views on landscape prominence were not, in my view, robustly justified and inconsistencies were found in respect of valued landscapes and landscape designation. Similarly, in relation to the application of policies, clarity was poor on how the appeal proposal failed against the matter of essential need and appeared to take issue with matters unconnected to the policies quoted. Nonetheless the Council were entitled to reach a planning judgement on the visual impact of the development and it must be acknowledged that any assessment of landscape harm is subjective. Even though I came to a different conclusion this does not mean that the Council acted unreasonably in reaching its judgement.
 11. It was common ground that the first criteria in Policy COM2 i.e. part a) did not apply. The second part appears to have been conflated with a number of matters which appears illogical, given the earlier appeal decision for the access gates, coupled with the position taken by the Council on two agricultural buildings not requiring prior approval. More so as the Council had effectively confirmed that it viewed the land to be agricultural and that the construction of the agricultural buildings was legitimate in the context of permitted development rights. In this context taking a negative stance on the need for the track in the light of those earlier decisions lacked rigour.

12. The appellant takes issue with the inclusion of erroneous policies in reason 2 which they regard as unreasonable behaviour. The Council have clarified that the inclusion of policies T1 and T2 were included in error and that reference should have been made to policies E1 and E2. I have no evidence that the applicants sought to clarify what appeared to be an obvious error in the decision notice prior to lodging their appeal. Whilst the administrative error is unfortunate there is little evidence that it led to unnecessary or wasted expense in the appeal process.
13. Whilst better dialogue between the two parties may well have narrowed the issues; on the evidence before me, that is by no means certain. I am satisfied that the positions of the Council and the applicants were sufficiently far apart so as to make any meaningful agreement between them very unlikely. In this regard an appeal was almost inevitable.
14. Whilst I have found parts of the Councils behaviour during the planning application process to be unreasonable, such behaviour alone is not sufficient for an award of costs. For costs to be awarded the unreasonable behaviour must have caused the party applying for costs to incur unnecessary expense during the appeal process. Here the appellants maintain that had the Council handled the application properly then an appeal may have been avoided.
15. For the reasons set out, and notwithstanding my comments on the lack of progress during the application stage of this appeal proposal, it has not been demonstrated that the Council has behaved unreasonably in the appeal process as set out in the PPG. It cannot therefore follow that the applicants have incurred unnecessary or unreasonable expense. The application for an award of costs is therefore not justified.

J Wilson

INSPECTOR