The Planning Inspectorate

Costs Decision

Site visit made on 5 February 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2021

Costs application in relation to Appeal Ref: APP/W0340/W/20/3258310 Units 2 and 4, Rowdown Farm, Upper Lambourn RG17 8NF

- 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 Rooknest Estate Ltd for a full award of costs against West Berkshire Council.
- The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class R of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use of units 2 & 4 to flexible commercial use comprising classes B1 (business) and B8 (storage).

Decision

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

Reasons

2. The Planning Practice Guidance (the 'PPG') advises that, irrespective of the outcome of the appeal, 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.

3. The applicant contends that the Council failed to properly exercise their development management responsibilities by preventing development which should clearly be permitted, having regard to Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO 2015').

4. To this regard, the applicant argues that the Council failed to produce evidence to substantiate both reasons for refusal and made inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis.

5. In respect of the first reason for refusal, the Council's primary concern related to the site's rural location of the development, which is located in the countryside away from public transport links. Consequently, users of the proposed development would be predominately reliant on the use of the private motor vehicle for most journeys.

6. As set out within my Appeal Decision, the permitted development right granted by Class R of the GPDO 2015 does not apply a test in relation to sustainability of location. Consequently, in refusing prior approval on such grounds the Council have failed to properly exercise their development management responsibilities and have acted unreasonably in this regard.

7. As part of their appeal statement, the Council explain that the likely increase in vehicle movements generated by the proposed change of use would have an adverse impact on the character of traffic in the vicinity of the site.

8. It is common ground between the parties that the proposed use would generate additional traffic movements when compared to the existing agricultural use. Whilst this is the case, the generation of additional traffic in and of itself is not a satisfactory reason to refuse prior approval, it is only when the additional traffic causes unacceptable harm to arise that prior approval could be refused under the provisions of Class R.

9. In this instance, the Council's position that the proposal would have an adverse impact on the character of traffic is not supported by any objective analysis, such as a comparison between existing and proposed traffic flows. As such, the Council have failed to demonstrate what harm would arise from the additional traffic generated by the proposal. Therefore, I find that the Council have failed to substantiate their concerns by relying on vague, generalised and inaccurate assertions about the proposal's impact which is unsupported by any objective analysis.

10. In respect of the second reason for refusal, the Local Planning Authority's assessment of the flooding risks on the site was informed by consultation with the Council's Land Drainage Engineer (the 'LDE'). The LDE advised that ground water levels at the site are potentially very high and that they believed that there was uncontrolled surface water run-off from the site access onto the highway.

11. The use of the terms 'potentially very high' ground water levels and 'I believe…' as part of the consultation response infers uncertainty on this matter. Indeed, at appeal stage, no technical evidence was provided by the Council to demonstrate that there were unacceptable flooding risks at the site, which would be capable of preventing the development from going ahead.

12. Instead, the Council advised that the potential uncontrolled run-off from the existing access onto the highway could be addressed with a sustainable drainage system, the details of which could be secured by a planning condition. However, no technical evidence was provided by the Council to demonstrate why such a condition would be necessary.

13. Given the above, I find that the Council have failed to substantiate their concerns in relation to the flooding risks on site by relying on vague and generalised assertions about the site constraints, which is unsupported by any substantive evidence.

14. In any event, the PPG explains that local planning authorities are at risk of a substantive award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by "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".

15. For the reasons given, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that the applicant has been put to wasted time and expense. Therefore, a full award of costs is justified.

Other Matters

16. The applicant has raised other concerns relating to the manner in which the Council handled the prior approval application, including not determining similar cases in a consistent manner. Given my findings above, it is not necessary to consider these matters in detail, as such considerations would not alter my overall conclusion.

Costs Order

17. 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 West Berkshire Council shall pay to Rooknest Estate 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.

18. The applicant is now invited to submit to West Berkshire 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.

Christopher Miell

INSPECTOR