



Costs Decision

Inquiry Held on 4 - 7 May 2021

Site visit made on 12 May 2021

by A McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2021

Costs application in relation to Appeal Ref: APP/A3010/W/20/3265803 Land to the North of Bigsby Road, Retford, Nottinghamshire DN22 6SG

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Muller Property Group Limited for a full award of costs against Bassetlaw District Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for residential development of up to 170 dwellings including details of access (all other matters reserved).
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Decision

1. The application for a full award of costs is refused.

Submissions for Muller Property Group Limited

2. The application relates to the unreasonable behaviour of the Council by issuing reasons for refusal which are not supported by evidence to substantiate them.
3. In relation to reason for refusal 1, the Council argued the scheme would generate a significant cumulative impact upon the surrounding road network, particularly at the Tiln Lane/Moorgate junction which would operate over capacity were the scheme approved. However, the Council presented no evidence at all that the junction would do so. The Council's expert witness accepted the junction would operate within capacity and instead made a different claim regarding the Arlington Way junction. The reason for refusal is not supported by evidence.
4. The Council states the scheme would lead to unacceptable harm to highway safety for motorists and pedestrians at the Tiln Lane/Moorgate junction and on Tiln Lane. However, during the Inquiry the Council abandoned any reliance on the National Travel Survey¹ cited in the reason for refusal and accepted its use was inappropriate. The Council also accepted that junction improvements to be made in relation to the Linden Homes development would improve conditions for motorists and pedestrians at the junction. The Council provided no evidence that development traffic from the scheme would cause unacceptable safety problems on Tiln Lane. It simply referred to the accident record on Tiln Lane, identified no design issues with the highway and could point to no common cause associated with those accidents.
5. In reason for refusal 2, the Council says the scheme would be a substantial and inappropriate extension into the countryside due to local topography and its

¹ Department for Transport National Travel Survey 2018

- visibility from the geological edge to the north east. However, at the Inquiry the Council's landscape witness made no such case and gave no evidence to support it.
6. Regarding the Council's point in the reason for refusal that the scheme would conflict with part of Paragraph 170 of the Framework², the Council's witness again provided no supporting evidence. Indeed, the witness agreed that the appeal site does not comprise part of a valued landscape in the terms of Paragraph 170.
 7. On the third reason for refusal about air quality, now withdrawn, the appellant points out that no air quality assessment was ever requested by the Council during the application process. The application was validated without one. The first time the claimant was advised of the need for it was when the application was refused. The claimant states that had the Council considered an assessment was necessary and requested one when the application was submitted, or at any time during the application process, it would have been commissioned and provided.
 8. The Council accepts this case turns on the tilted balance. However, the claimant contends that significant allegations of harm in each of the reasons for refusal have not been substantiated by evidence. Failure to do so demonstrates that the Council;
 - (i) did not properly exercise its development management responsibilities and sought to rely on reasons for refusal which have not stood up to scrutiny, contrary to the Planning Practice Guidance (PPG); and
 - (ii) failed to substantiate each of the reasons for refusal in its Decision Notice.
 9. Accordingly, the claimant considers this to be unreasonable behaviour which has led to unnecessary and wasted expense.

Response by Bassetlaw District Council

10. In response to the claimant's first point on reason 1, the Council says it did produce evidence that the Tiln Lane/Moorgate junction would operate over capacity if the traffic queuing issues (at Arlington Way junction) raised by the Council's witness were not resolved. The Council's focus has not moved away from the Tiln Lane / Moorgate junction. Whilst the problem stems from the Arlington Way junction, also located on the local road network, the Council's point is that the effect of traffic queuing from there is felt on the Tiln Lane/Moorgate junction, as identified in the reason for refusal.
11. On the claimant's second point on reason 1, the Council states it provided expert evidence regarding the impact the scheme would have both from queuing traffic generally and on highway safety based on the accident record at Tiln Lane. The Council also says it did point to a common cause to the accidents and set out in detail its concerns relating to safety on Tiln Lane. The Council also states that a fair reading of the reason for refusal shows it is not predicated or founded on the National Travel Survey.
12. In terms of the claimant's points regarding reason 2, the Council believes it made clear its view that the scheme would be a substantial and inappropriate extension into the countryside which was not predicated or founded solely on the topography point. The evidence of the Council's expert witness clearly sets out that the scheme would be substantial and inappropriate for a range of evidenced reasons relating back to elected Members' concerns.

² National Planning Policy Framework 2019

13. The Council says its landscape witness was clear, and the point is not disputed by the claimant, that the conflict with Paragraph 170 of the Framework was not solely on the basis that the site was 'valued landscape'. As such, the scheme continues to conflict with Paragraph 170. The fact that the site is not a valued landscape in such terms does not render the landscape as valueless or answer the concerns set out in the reason for refusal.
14. In relation to reason 3, the Council is unclear how this was unreasonable or led to unnecessary cost to the claimant. An air quality assessment was missing. It was provided and the Council was satisfied and withdrew the reason for refusal. This was all done prior to the case management conference for the Inquiry and, in the Council's view, this was all entirely reasonable.
15. The Council notes that the claimant has made a full costs application which suggests the whole appeal could have been avoided had the Council, in the claimant's view, behaved reasonably. It is argued that none of the claimant's claims go to a wholesale abandonment of the reasons for refusal. The Council's fundamental concerns, and the evidence, have been provided and remain to be resolved. The claimant has not explained how, if the Council's alleged unreasonable behaviour had not occurred, the entire appeal would have been avoided. The Council strongly believes it has not behaved unreasonably and has sought to make its case, with evidence, on the matters raised by the reasons for refusal.

Reasons

16. The PPG advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG also sets out examples of unreasonable behaviour by local planning authorities, including the failure of the planning authority to substantiate a stated reason (or reasons) for refusal of planning permission. In such cases, the planning authority must be able to show that it had a reasonable basis for its stance.
17. In my assessment, the Council - through its elected Members - acted reasonably in exercising its development management duty by assessing and determining the proposal based on the evidence available at the time. This included the lack of an air quality assessment and the material consideration of representations from residents and interested parties. Whilst Council officers provided a clear and justified recommendation to approve the proposal, elected Members are entitled to disagree with that advice. In this case, they found that despite the proposal's compliance with local development policies, this was outweighed by clear and material planning reasons relating to traffic and highway safety, landscape and air quality.
18. For the appeal, the Council called three expert witnesses to give evidence on its behalf on the disputed reasons for refusal. The witnesses gave their professional opinions in written and verbal evidence to the Inquiry.
19. In relation to reason 1, whilst not submitting any technical survey or assessment of their own, the Council's evidence was to present its critique and challenge to the appellant's highway and traffic modelling evidence on several points, including the impact of traffic queuing, and to identify common causes in the accident data for Tiln Lane. The Council's evidence regarding this was validated by the claimant's rebuttal which was submitted in an effort to explain or rectify the alleged deficiencies in their own evidence. In this respect, the Council's approach was reasonable.

20. In relation to reason 2, I find that the Council's evidence – the statement of case and the proof and verbal submissions of its landscape witness – clearly sets out the Council's concerns that the appeal scheme would be a substantial and inappropriate extension into the countryside. It makes clear the Council's position is not based solely on a single topography point but on several evidenced reasons relating to the concerns of elected Members, residents and interested parties and as reflected in the reason for refusal. This includes the material consideration of the site and surroundings as a valued landscape to the local community rather than in terms of the Framework and an assessment of its contribution to the wider character of the landscape and area. As such, I find the Council provided evidence that is reasonable in dealing with relevant and material landscape and planning issues in this case.
21. On reason 3, it is not clear to me how the Council's behaviour has been unreasonable or how it led to unnecessary cost at the appeal. It is accepted that the Council could have advised the claimant that an air quality assessment was required prior to the reason for refusal. However, it was not raised in the Officer's Report and was identified by the elected Members when the application was determined. Consequently, advising the claimant of that requirement could not have occurred until that point. From what I have seen and heard, once the assessment was requested, the appellant produced and submitted it. The Council accepted it and withdrew the reason for refusal. Therefore, I consider this matter to have been dealt with by the Council in a reasonable and timely manner and has caused no wasted expense in the bringing of this appeal.
22. The Council has not deviated from its acceptance that the tilted balance should be engaged in this case. The reasons for refusal clearly set out the harm which elected Members identified at the time of determination would result from the scheme. Members are entitled to make that judgement. These concerns were reasonable and justified within the context of the Framework and have been supported by evidence. The Council provided evidence to support its reasons for refusal through expert witnesses and their submissions. Whether the claimant agrees with that evidence is not a matter for this application nor reasonable or justifiable grounds for an award of costs.
23. In their application for full costs, the claimant rightly identifies the need to show how the unreasonable behaviour directly caused unnecessary cost. This has not been clearly set out or adequately explained. Furthermore, it has not been clearly explained how the unreasonable behaviour has resulted in the entire appeal, and therefore the full cost of it, being unnecessary.
24. Consequently, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Andrew McCormack

INSPECTOR