
Costs Decision

Site visit made on 27 April 2021 by A J Sutton BA (Hons) DipTP MRTPI

by R Kirby BA (Hons) DipTP MRTPI

Decision date: 23 June 2021

Costs application in relation to Appeal Ref: APP/D3125/W/21/3266576 The Sidings, Station Road, Kingham

- 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 D Griffin for a full award of costs against West Oxfordshire District Council.
 - The appeal was against the refusal of the Council to grant planning permission for change of use of existing hardstanding to commercial use for the parking of vehicles in connection with a small haulage business.
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Decision

1. The application for a costs award is allowed in part, in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) makes it clear that parties in planning appeals normally meet their own expenses. It sets out that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, in either a procedural or substantive way, which has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Examples of behaviour which may give rise to procedural award of costs against councils include introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen. In respect to a substantive award, this could include acting contrary to, or not following, well established case law.¹
4. The Council submitted a lengthy appeal statement with copious pages of appendices. Although including an error at 2c, the appendices provided some background relevant to the case. However, the statement, whilst also providing some context, included sizable sections in respect to planning history not relevant to the case. Moreover, it included a set of comments in response to the applicant's planning statement and appeal statement which made vague observations, assertions and raised questions about the site and proposal. The statement also had a number of errors with reference to a stable block and cited policies of the Framework not relevant to this case.

¹ PPG Paragraph 049 Reference ID: 16-049-20140306

5. The length, format and poor quality of parts of the Council's statement necessitated a response from the appellant to clarify and address evident misunderstandings in the case, issues regarding the lawful use of the site, special circumstances of the applicant and to correct legal and factual errors, particularly in respect to the Council's Public Sector Equality Duty (PSED).
6. The Council has apologised, as part of its rebuttal to the costs application, for aspects of its statement which caused offense to the applicant. However, in light of the above, I conclude that the Council did introduce fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen for the reasons outlined. The appellant did as a result feel compelled to engage representatives to respond to the statement, and, given its disproportionate size and format, I have no doubt that this would have resulted in a lengthy exercise. I therefore conclude that the Council has behaved unreasonably in this respect and this behaviour has incurred unnecessary and wasted expense for the applicant.
7. Section 149 (1) of the Equality Act 2010 requires public authorities, in the exercise of its functions, to have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
8. To take a decision in accordance with the PSED the public authority must, having taken reasonable steps to inquire into the issues, understand the likely impact of a decision on the equality needs which are potentially affected by the decision.
9. Whilst the applicant did not make this matter central to his planning application, it was clear from the outset that he was a person with a protected characteristic as defined by the Act and that PSED was a main issue in this case. Indeed, the Council had granted the applicant a personal consent in 2019, citing special circumstances.
10. The onus was on the Council, at the application stage, to comply with this duty, regardless of how the applicant chose to present this particular case. The officer's report referenced the 'special circumstances of the applicant'. It was also recognised that he currently operates the business elsewhere, and that there was insufficient evidence that the existing site could not be adapted and therefore the justification of special circumstances would not outweigh the harm of the proposal.
11. Although it is good practice to reference the Act where PSED is a main issue, it is not a requirement, the Council was appearing to consciously consider the applicant's protected characteristic, taking account of his disability, this influenced the decision making, and applying proportionality this was reflected in the officer's cursory assessment in the report.
12. Subsequent comments in the Council's statement of case for the appeal, in respect to this matter, did not reflect this approach and included inaccuracies regarding the PSED, which necessitated a response from the applicant as outlined above, and, I have concluded on this matter in this application.

13. These inaccuracies have been compounded further in the Council's statement rebutting this costs application, which is of great concern. However, the Council, at the planning application stage, did comply with the PSED and whilst its behaviour was substantively unreasonable, at the appeal stage, in respect to statements which were contrary to well established case law, this deficiency did not in itself prevent or delay development which should clearly be permitted, and therefore the applicant did not incur wasted expense in this regard.
14. The applicant states that the Council has introduced sustainability and principle of development as a new issue during the appeal. The Council's decision notice cites reasons for refusal which included 'location' and references policy OS2 of the Local Plan. The officer's report highlights the relevance of policy OS2 and states that development in the open countryside will be limited to that which requires and is appropriate for a rural location and which respects the intrinsic character of the area. The officer opines by reason of its siting and nature of the development, the change of use would result in an intensification of the use of land.
15. There is no requirement on the Council to list reasons for refusal separately on a decision notice. The applicant was aware that conflict with this policy was at the core of the Council's case. Indeed, he addressed this policy in his planning statement at the outset. Whilst it was not reasonable behaviour on the part of the Council to only elucidate its assessment of the proposal against this policy as part of its appeal statement, this did not necessitate a response from the applicant who had already covered this matter in his submitted evidence, nor did it lead to any wasted expense for this reason.
16. In respect to harm to the landscape and scenic beauty of the Area of Outstanding Natural Beauty, the officer's report provided an assessment of the effect of the proposal and substantiated this reason for refusal at that stage. The Council's appeal statement, at section 7, provided a more detailed assessment with referenced to the Landscape Character Assessment, relevant local plan policies and the Framework. Whilst I have reached an alternative conclusion on this issue in my recommendation, the evidence presented is well founded in policy and the reason has been substantiated by the Council. The Council is not obliged to engage landscape professionals to support a planning case and it was the appellant's choice to commission a specialist assessment to support his own particular judgement. I therefore conclude that the Council has not acted unreasonably in respect to this matter.

Recommendation and Conclusion

17. I find that the Council has acted unreasonably on a number of counts in this case. However, unreasonable behaviour that has resulted in unnecessary or wasted expense as described in the PPG has only been demonstrated with regards to the Council introducing fresh and substantial evidence at a late stage, in its appeal statement, which necessitated extra expense for preparatory work that would not otherwise arise. The award is therefore limited to expense incurred by the applicant in addressing errors, misunderstanding and queries raised in the Council's appeal statement, including evidence clarifying the Council's obligation with regards to the PSED in this case. Therefore, I recommend that a partial award of costs is justified in this respect only.

Costs Order

18. 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 Oxfordshire District Council shall pay to Mr D Griffin, the partial costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect to the introduce fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise arisen. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

A J Sutton

APPEAL PLANNING OFFICER

Inspector's Decision

19. I have considered all submitted evidence and the Appeal Planning Officer's report, and on that basis, I agree that a partial award of costs is justified, and I make that award in the terms set out above.

R C Kirby

INSPECTOR