The Planning Inspectorate

Costs Decision

Site visit made on 7 January 2021

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21st September 2021

Costs application in relation to Appeal Ref: APP/X3540/W/20/3259129
Raceway Services, Back of Market Place, Saxmundham IP17 1AG

- 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 Mrs L Jardine for a full award of costs against East Suffolk Council.
- The appeal was against the refusal of planning permission for change of use of self-contained ground floor unit: Class A1 to C3.

Decision

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

Reasons

1. The application for costs seeks a full award on substantive grounds on the basis that the Council has prevented or delayed a development which should clearly be permitted. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

2. At the time the Local Planning Authority (LPA) made its decision on 1 May 2020, the extant development plan comprised the East Suffolk Council - Suffolk Coastal District Local Plan – Core Strategy and Development Management Development Plan Document 2013 (the CSDMDPD). The most important policy for determining the application was Policy DM10 'Protection of Employment Sites'. The policy applied to premises with an employment use including small sites such as the appeal proposal.

3. The appellant made submissions in the original planning statement accompanying the planning application that Policy DM10 was out-of-date when assessed against parts of the National Planning Policy Framework (NPPF) (paragraphs 81, 85 and 120). Conversely, the LPA determined that the proposal would contravene other parts of the NPPF, namely paragraph 83 (in support of Policy DM10). Whether policies are out-of-date (and the tilted balance engaged) and the degree of weight to be given to them (NPPF paragraph 213) are matters of judgement. There is little to persuade me that the LPA behaved unreasonably in its approach in continuing to giving full weight to Policy DM10 at the time of its decision, particularly in light of the relatively recent 2019 appeal[1] it has referred to.

[1] APP/J3530/W/19/3224893

4. Policy DM10 set outs a permissive route for the appellant's proposal provided it has been demonstrated that there is no current or long-term demand for the retention of all or part of the site for employment use, with an encouragement to agree this with LPA before submitting a planning application. The application form states that no pre-application advice was sought. In terms of satisfying this part of Policy DM10 the Local Planning Authority (LPA) refers to its Commercial Property Marketing Best Practice Guide (2016) which recommends for sites such as the appeal premises a default 12 months marketing exercise[2]. I recognise this Guide is not part of the development plan but was nonetheless a material consideration which the LPA could reasonably give moderate weight to.

5. The evidence submitted by the appellant did not amount to a sustained 12 months marketing exercise. It is therefore a matter of judgement as to whether the evidence provided by the appellant provided an alternative degree of assurance that there would be no harm against the objective of Policy DM10. The LPAs officer report clearly addresses the appellant's submitted evidence versus the LPAs expectations of the evidential threshold required to satisfy adopted development plan policy. Overall, the LPAs conclusion that the appeal proposal would be contrary to Policy DM10 was reasonable.

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that planning applications are determined in accordance with the adopted development plan unless material considerations indicate otherwise. Whilst I share the appellant's point that the lack of a clear balancing exercise in the LPAs consideration was deficient I do not consider it goes as far as to demonstrate the LPA behaved unreasonably given the officer report deals with the nub of the conflict with Policy DM10.

7. At the time of the planning application the appellant's Planning Statement (March 2020) emphasised the then emerging Suffolk Coastal Local Plan (SCLP), which had reached an advanced stage of examination by the time the planning application was submitted. This included a clarification that emerging policy protecting employment sites would only apply to sites and premises in B class use rather than the more broad-brush approach of all commercial premises in Policy DM10.

8. Undoubtedly, the emerging SCLP was a material consideration and the omission to it in the LPAs assessment of the planning application is remiss. However, given the emerging SCLP was still in examination (awaiting an Inspector's report), remained to be adopted and would have still been subject to a period for legal challenge, the degree of weight to be given to the emerging Plan remains one for a decision maker, having reference to paragraph 48 of the National Planning Policy Framework. As such at the time of the decision it may have been reasonable to still ascribe only limited weight to the emerging SCLP, insufficient to indicate a decision other than in accordance with extant Policy DM10. Alternatively, had the LPA considered the emerging SCLP it may well have given commensurate weight to policies SCLP4.9 and SCLP12.8, which it now considers the appeal proposal would contravene. Consequently, had the emerging SCLP been taken into account as a material consideration, there is no certainty that the appeal proposal would have been permitted and thus the appeal avoided.

[2] Paragraph 2.7.13 of the Best Practice Guide (2016)

9. Whilst the omission of text in the decision notice that in dealing with the application the LPA has worked with the applicant in a positive and proactive way is a contravention of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 it is not an indicator in itself of unreasonable behaviour. Accordingly, it is not conclusive that further dialogue would have resulted in an alternative decision by the LPA.

10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated in relation to the appeal.

11. For the reasons given above, I refuse the application for an award of costs.

David Spencer

INSPECTOR.