



Costs Decision

Site visit made on 29 June 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2021

Costs application in relation to Appeal Ref: APP/J0350/W/19/3243603 4 - 10A Alexandra Road, Slough SL1 2NQ

- 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 AA & Sons Ltd for a full award of costs against Slough Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the consolidation of planning application P/08040/001, and DOE appeal decision ref no T/APP/V0320/A/92/204598/P7, dated 22 October 1992, with minor adjustments to internal alterations, changes to fenestration and infill adjustment to south elevation, together with the relaxation of condition 12 of planning permission P/08040/001, without complying with a condition attached to planning permission Ref P/08040/004, dated 27 June 1995.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an 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. Examples of unreasonable behaviour at paragraph 16-049-20140306 include acting contrary to or not following well-established caselaw and not reviewing a case promptly following the lodging of an appeal against the non-determination of a planning application.
3. In reaching a view on this application I have also had regard to the content of the previous costs application, rebuttal, the previous Inspector's costs decision, and the Consent Order on 26 March 2021 in reaching my findings. In the appellant's case for an award of costs it is alleged that the Council has behaved unreasonably having regard to several of the examples listed in paragraph 16-049-20140306. Many of these have not been adequately demonstrated by the appellant, as outlined below.
4. As the application was not refused permission, there is no reason for the Council to substantiate reasons for refusal. The Council did not refuse the application for reasons related to compliance with the development plan and national policy. As the Council's objection relates to the validity of the application such a matter could not have been addressed by planning conditions.

5. While the Council has not provided further comments in respect of the highway matters, it is the Council's choice to do so, and I have taken the view that this implies no objection to the revised scheme. I see no substantive evidence that demonstrates the Council either deliberately concealed evidence or has not provided reasonably requested information. The previous planning permission sought to be varied was approved approximately 26 years ago. With the changes in policy such as the National Planning Policy Framework (2021) (the Framework) and the PPG and examples of caselaw provided and relied upon by the appellant, there has been relevant material changes in circumstance since the previous approval.
6. The Council has not persisted in a substantive objection to a scheme that the Secretary of State previously indicated was acceptable. The initial technical highway matters raised during the consideration of the application are noted and were matters that in my view were necessary to clarify and address. Without doing so the scheme would not have been likely to be capable of being approved. Therefore, the Council has not made vague, generalised, or inaccurate assertions about the development and unreasonable behaviour resulting in unnecessary or wasted expense in this regard is not demonstrated.
7. In my view and having regard to the appellant's submissions up to the legal advice dated 9 September 2019, the Council's concerns about the application were justified on the basis of sound principles and their concerns were not unreasonable. Furthermore, it regularly communicated its concerns to the appellant during this time. However, the appellant provided the Council with legal advice dated 9 September 2019. This advised, with reference to relevant caselaw¹, if there is ambiguity in the description of the development in the planning permission, it is possible to look at extraneous documents. The decision notice is clear on its face and involves the consolidation of decision 001 and the appeal decision T/APP/V0320/A/92/204598/P7 (004) so as to include both the extension to the supermarket and the residential units.
8. I do not share the view that the Council has provided information to be manifestly untrue or inaccurate. However, the appellant's legal advice made adequately clear the position on a technical matter based upon relevant caselaw. The appeal was not lodged for a further three months. There is not substantive evidence demonstrating the Council fully and adequately took on board or examined in detail the implications of the legal advice, or sought any of its own legal advice at that time to respond to the substance of the points raised. Therefore, in-light of this and having regard to the subsequent Consent Order on 26 March 2021, I can come to no other conclusion other than the Council has acted contrary to well-established caselaw. Unreasonable behaviour is therefore demonstrated which has resulted in this appeal, and in unnecessary and wasted expense in the appeal process.
9. Furthermore, notwithstanding the declaration in the Consent Order, in their revised appeal submission the Council has remained consistent in their view that this application is null and void including in responding to the costs application, without additional substantive reasoning beyond that already examined by the Court. Therefore, they have not adequately reviewed their case in a prompt manner as part of sensible on-going case management. This

¹ R v Ashford BC ex-parte Shepway DC [1999] PLCR 12; and, Trump International Golf Club Scotland Ltd and Scottish Ministers [2015] UKSC 74.

is also unreasonable behaviour that has resulted in unnecessary and wasted expense in the appeal process.

10. The PPG advises that costs cannot be claimed for the period during the determination of the planning application and that costs unrelated to the appeal are ineligible. Notwithstanding this, the appellant has put it to me that the costs should be awarded for events before the appeal was brought, namely from 14 August 2019. This is not justified as until the legal advice was provided the appellant had not adequately justified its view with respect to the relevant caselaw and technical arguments. I also see little evidence of any unnecessary or wasted costs incurred in the application process after that date.
11. However, the failure to determine the application from receipt of the appellant's legal advice and continuing to pursue the defence of their position constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG, and the appellant has been faced with the unnecessary expense of lodging the appeal.

Costs Order

12. 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 Slough Borough Council shall pay to AA & Sons Ltd, the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to the 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.

Dan Szymanski

INSPECTOR