
Costs Decision

Site visit made on 4 January 2022

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 January 2022

Appeal Ref: APP/Y3940/W/21/3280132

Lime Yard adjacent to Grimstead Road, West Grimstead SP5 3RQ

- 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 Roffey Brothers Limited for a full award of costs against Wiltshire Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for development described as change of use from storage, processing and distribution of lime, to storage, processing and distribution of horticultural products, with the addition of one building.
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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 costs may 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.
3. The applicant claims that the Council acted unreasonably on Grounds which I summarise as:
 - (a) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - (b) failure to produce evidence to substantiate each reason for refusal on appeal;
 - (c) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and
 - (d) refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The application was refused by the Council's Committee against the recommendation of officers. The Committee was clearly within its rights to do so. Such a decision must nonetheless be capable of defence.
5. At root was consideration of the current operation of the site. Here it was not unreasonable to note that operations on site had declined in intensity over time. However, in the absence of any concrete evidence, this did not provide a

sound basis to assume that they would cease rather than increase. In any case, and given the broad similarity of the existing and proposed uses, the benchmark against which to measure the appeal proposal's acceptability was a 2019 permission granted by the Council in relation to the site. This was both open-ended and imposed little or no restriction or control in the areas subject of objection.

6. Against this background greater weight was thus placed on what is vaguely termed 'local knowledge' than the Council's own record of decision making, the professional views of its specialist advisors, and those of consultants employed by the applicant. Whilst the Council may again have been free to apportion weight as it saw fit, sound backing in evidence-based reasoning was still required.
7. In relation to landscape, noise, dust, highways and ecology however the Council advanced no evidence to clearly substantiate the claim that harm would arise. In this regard a 2012 appeal decision held little direct relevance given that the proposed development differed. Moreover, in relation to all these matters favourable outcomes could all have been secured by condition.
8. Insofar as the Council sought to rest its case particularly on saved Policy E19 of the Salisbury District Local Plan 2003, this can only have been on the basis that the site boundaries would expand. The policy is otherwise clearly supportive. However, no evidence was provided to explain how the small areas incorporated within the boundary, and within which no new activities were proposed, would give rise to any distinct and/or additional effect.
9. I therefore find that on all the Grounds claimed by the applicant, the Council acted unreasonably. As it can only logically follow that the application should have been approved, all the costs incurred by the applicant in the appeal process entailed wasted expense.

Conclusion

10. For the reasons outlined above, I find that unreasonable behaviour resulting in wasted expense as described in the PPG, has been demonstrated. A full award of costs is therefore justified.

Costs Order

11. 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 Wiltshire Council shall pay to Roffey Brothers Limited, the full 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.
12. Wiltshire Council is now invited to submit to Roffey Brothers Limited, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Benjamin Webb

INSPECTOR