



Costs Decisions

Inquiry opened on 18 January 2022

Site visit made on 22 February 2022

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decisions date: 8 April 2022

Costs applications in relation to APP/V3500/C/21/3268764 & APP/V3500/W/21/3267400

- The applications are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - **Application A** is made by Mr Paul Lansdowne and Lansdowne Plant for an award of costs against Suffolk County Council.
 - **Application B** is made by Suffolk County Council for a partial award of costs against Mr Paul Lansdowne and Lansdowne Plant.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the making of a material change of use of the land to a mixed use comprising use for the storage and repair of agricultural and contractors' plant and the storage and processing of inert waste, and the refusal of planning permission for recycling and waste transfer of inert wastes.
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Decisions

Application A

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

Application B

2. The application for a partial award of costs is refused.

Reasons

3. Parties to a planning appeal are normally expected to bear their own costs, but costs can be awarded where the unreasonable behaviour of a party has caused another party to incur unnecessary or wasted expense. Unreasonable behaviour can be procedural or substantive. Both applications and the respective responses were made in writing.

Application A

4. The Appellant submits that the Council acted unreasonably by refusing planning permission and issuing the enforcement notice on grounds which were capable of being dealt with by conditions, that it failed to substantiate its reasons for refusal and for issuing the enforcement notice, that it acted contrary to and/or did not follow well-established case law in that it failed to make a decision which was consistent with other planning decisions made by it and failed to have regard to the planning fall-back position. As a result it is argued that it prevented and delayed development which should clearly have been permitted.
5. The matters in dispute concern noise mitigation and highways safety. Neither issue had been resolved to the Council's satisfaction when the planning

application was determined, but the appellant maintains that these matters could have been dealt with by way of conditions, and refers to 'concessions' made by the Council during discussion of conditions that might be imposed should planning permission be granted on the appeals. The discussion of conditions at the Inquiry was, however, a 'without prejudice' discussion, as I had made clear, so I do not accept that the Council's contributions could have amounted to the concessions claimed.

6. Regarding the matters that the appellant claimed could have been made the subject of conditions, reference is made to the Planning Practice Guidance (PPG), paragraph 009, which concerns when conditions can be used relating to land not in control of the applicant. It provides that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission, though it may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition). In essence then, it is argued that the Council should have granted planning permission, conditioning the unresolved matters in Grampian terms, and that not to do so amounted to unreasonable conduct.
7. So far as the highways reasons for refusal were concerned, the Council's planning witness was of the view that the Council's position had been that there was no prospect at all of the highway improvements matter being satisfactorily resolved, presumably within the time limits of the permission. I disagree, the Council's position is really about doubt, considerable though it may be, that the mooted works could have been achieved within highways land. Nonetheless, I do not interpret the PPG guidance as requiring that Grampian conditions must be used unless there is no prospect at all of the resolution of the matter. There is a general discretion whether or not to grant planning permission subject to a Grampian condition. In this case there were two separate matters, highways improvements and noise, about which considerable doubt remained, determination of the planning application had already been deferred to enable additional information to be provided, and there was a related enforcement case concerning matters which had previously been the subject of a Lawful Development Certificate application based on immunity from enforcement through the passage of time. In the circumstances I do not consider it unreasonable of the Council to decline to grant planning permission. Although I have come to a different conclusion, that is a matter of planning judgement, and I note that neither issue has been resolved.
8. Nor do I accept that the Council failed to substantiate their reasons for refusal. It remained clear that there was uncertainty that the highways improvements could in fact be put in place to Highways Authority specifications, and the application does not in fact make this claim in respect of the noise refusal.
9. The Council has, in other cases, granted permissions where matters remained unresolved, but while each case must be determined on its own merits, I did not consider the circumstances of the other cases referred to to be so similar that they must be followed. In particular, I heard no evidence that where conditions were imposed in the other cases, there remained doubt that they could ultimately be discharged.

10. The matter of fallback was relied upon for highways matters in particular, though also in part in respect of noise. As often happens, worst case scenarios were relied upon, none of which I found credible. So far as it is suggested that the Council failed to have regard to what could be done within the terms of the 2011 permission, I consider this argument to be misconceived.
11. I find accordingly that unreasonable behaviour on the part of the Council, causing the appellant unnecessary or wasted expense, has not been demonstrated, so the conditions required for an award of costs are not met.

Application B

12. This application is confined to the appellant's appeal against the enforcement notice on ground (d), namely that it was too late to take enforcement action. While I have some sympathy with the Council in that the appeal on this ground had very little prospect of success, it seems to me that that would have been a lot clearer if the Council had formulated its description of the breach of planning control correctly. By focussing on the processing of inert waste, the door was opened to argue that that activity had commenced in 2008, which of course is only part of the story. Further, the Council did not really address the complexity of mixed uses enforcement until late in the day, itself concentrating on the single component of the use with which it was concerned. In the circumstances I find that pursuing the appeal on this ground did not amount to unreasonable behaviour by the appellant. It follows that the partial award of costs cannot be granted.

Paul Dignan

INSPECTOR