



Costs Decision

Site visit made on 5 January 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2022

**Costs application in relation to Appeal Ref: APP/N1350/W/21/3283373
Former (Bank Top) Coal Depot Site (Land adjacent to train lines), Melland
Street (far eastern end), Darlington DL1 1SF**

- 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 William Gate for a full award of costs against the Darlington Borough Council.
 - The appeal was against the refusal of planning permission for change of use of land to Use Class B8 storage and/or distribution (noting this class includes open air storage).
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) 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 or wasted expense in the appeal process. Applications for an award of costs may be made on procedural or substantive grounds. The Guidance is clear in setting out the circumstances in which a Council could be vulnerable to an award of costs against it.
3. The Guidance is clear in setting out the circumstances in which a local planning authority could be vulnerable to an award of costs against it. It also goes on to advise of the circumstances in which a local planning authority's handling of the planning application prior to the appeal may lead to an award of costs.
4. In this instance the applicant is seeking, on substantive grounds, a full award of costs against the Council on the grounds that the Council unreasonably prevented or delayed development which should be permitted having regard to its accordance with the development plan, national planning policy and other material considerations. In addition, it is argued, the Council failed to produce evidence to substantiate each reason for refusal and that which was submitted was vague, generalised or inaccurate and unsupported by any objective analysis.
5. For the reasons set out in my decision on the planning merits, it is concluded that the proposal should not be permitted having regard to the development plan, national planning policy and other material considerations. I accept that within a broad use class such as that set out by Use Class B8 there is an inherent level of flexibility.
6. However, the proposal is framed in nebulous terms and I have sympathy with the Council and their approach to the determination of the application. Whilst

the use of planning conditions may provide some assurances regarding stored heights and broad site layout, the absence of more detailed information regarding the nature of the storage and stored material leads me to conclude that the proposal has not demonstrated that it would be compatible, not just with the predominantly residential character of the surrounding area, but also with the corresponding character and nature of the roads leading through that residential area.

7. The Council's case in these respects is as well put as the level of detail submitted allows it to be, and clearly expresses the Council's consideration of the proposal against the provisions of the development plan, national planning policy and other material considerations. I am not therefore persuaded that the Council's reasoning is unduly vague or generalised. That the proposal, because of this relative shortage of detail and lack of precision, is not capable of demonstrating that it would be an appropriate use of the site in this location and context, does not amount to unreasonable behaviour by the Council. As unreasonable behaviour has not occurred, the question of any costs incurred by the appellant is not a matter for this decision.

Conclusion

8. For the reasons set out above, the applicant has not satisfactorily demonstrated unreasonable behaviour by the Council. As such, the application for an award of costs fails.

G Robbie

INSPECTOR