
Costs Decision

Hearing Held on 6 September 2022

Site visit made on 6 September 2022

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 2 December 2022

Costs application in relation to Appeal Ref: APP/X0360/W/22/3299942 Land at Pineridge Park, Nine Mile Ride, Wokingham

- 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 Felix Cash for a partial award of costs against Wokingham Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for change of use to a holiday park site with 6 lodges, car parking and cycle storage.
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Decision

1. The application for an award of partial costs is allowed.

The submissions for the appellant

2. The appellant makes the claim for an award of partial costs relating to Reasons 1, 2, 3 and 4 (relating to the principle of the development, car use, landscape character and trees), of the Council's decision notice. He makes it clear that reasons 5 and 6 (flooding and absence of mitigation for a protected site) are not included and also not included is the work undertaken in respect of the need for tourist accommodation.
3. The appellant considers that the Council has failed to have regard to, or has given inadequate consideration of, the 'fall-back' position represented by the lawful use of much of the site for storage. There is no mention of it in the officer's report and the Council's case presented at appeal is made almost without any real acknowledgement of this. This is particularly pertinent to reasons 1, 3 and 4.
4. There is no reference in the officer's report to the 2017 appeal decision and the Council officers appear to be saying that the 2017 appeal Inspector was wrong and do not acknowledge that tourist development is more appropriate for more remote locations. The previous planning decision made by the Council for 8 holiday cabins at this site (Ref, 200843 refused 11 November 2020), did not contain reasons relating car use/sustainability. There is no explanation as to why this is now raised. In the appellant's view, this is clearly unreasonable.

The response by the Council

5. Reference to the 'fall-back' position is contained within the body of the report. It is unreasonable to suggest that it is omitted.

6. The 2017 Appeal decision is not referred to in the officer's report but it has been dealt with at the Hearing and it presents different considerations.
7. In relation to a reason for refusal relating to car use/sustainability, the issue is dealt with in the officer's report for the previous scheme for 8 cabins but has been omitted from the reasons for refusal. The omission was probably an error and it should have formed a reason for the previous scheme. Therefore, rather than perpetuate that error, a reason is included within the reasons for refusing this current appeal scheme.
8. In relation to trees, it is clear from the previous 8 lodge scheme that the Council had concerns about the level of information and likely effects of the proposal. That concern is replicated for the current scheme. There are trees on and adjacent to the site and there is development proposed, along with underground services, that need to be considered.

Reasons

9. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own expenses in appeals and that costs may only be awarded against a party who has acted unreasonably and thereby caused the party who is applying for costs to incur unnecessary or wasted expense in the appeal process.
10. Although there is some reference to the approved Certificate within the Council's documents, I consider that there has been no proper consideration of the lawful use of most of the site and the effects that this has, and could have if legitimately used more intensively, on the surrounding area. There is no balancing exercise demonstrated by the Council which weighs the effects of the proposed development with the lawful use of the site. I find this unreasonable in itself. Had such an exercise been conducted, I consider that the only reasonable outcome would have been to conclude that the appeal proposal would result in a more acceptable form of development; a development which would have an enhancing effect on the character and appearance of the area and one which could retain existing trees within and around the site and would contain provision for more landscaping, including trees.
11. In relation to car use, the 2 appeals referred to come to different conclusions. These are for different sites, albeit close-by, and for residential use not tourist related development. Whilst there may be different patterns of car use for tourists and residents, I consider that some destinations will be similar and so trips to supermarkets, pubs, restaurants etc may be comparable. The evidence presented and referred to for the 2017 appeal included details of facilities and distances to them, whilst the 2015 decision makes no such references. I can only assume that no such evidence was presented in the earlier case. I have similar evidence as was referred to in the 2017 appeal and additional details of footpaths and tourist destinations.
12. In addition, I consider that the appellant is entitled to place reliance on the Council's previous decision at this site for the 8 lodge scheme. Whilst the Council now claim that their decision should have included a reason relating to unsustainable car use, the simple fact is that it did not and the appellant would be entitled to conclude that the Council did not raise that issue for this site. To now include that issue for a smaller scheme is unreasonable in my judgement.

13. The Council has failed to give proper consideration to the fall-back position represented by the lawful use of the site. This clearly separates it from the appeal schemes referred to. This also means that the Council failed to compare the effects of the appeal scheme with the effects of the lawful use of the site. In my view, such a comparison could only have resulted in the reasonable conclusion that the appeal scheme would benefit the character and appearance of the area. The inclusion of the car use/sustainable location reasons when it had not been included within the previous bigger scheme is also unreasonable.
14. The Council's actions have delayed and sought to prevent development which should clearly have been allowed. The appellant has been unnecessarily put through the appeal process and has had to expend resources and finance which should not have been necessary. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

15. 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 Wokingham Borough Council shall pay to Mr Felix Cash, the costs of the appeal proceedings described in the heading of this decision relating to the Council's reasons for refusal numbered 1, 2, 3 and 4 but excluding reasons 5 and 6 and the work undertaken in relation to the need for tourist accommodation; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. Mr Felix Cash is now invited to submit to Wokingham Borough 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.

T Wood

INSPECTOR