The Planning Inspectorate

Costs Decision

Hearing held on 18 October 2022

Site visit made on 18 October 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Costs application in relation to Appeal References: APP/G2713/C/22/3298638, APP/G2713/W/22/3297476, APP/G2713/W/22/3297473, APP/G2713/C/22/3301099, APP/G2713/W/22/3301098
The Airfield, Bagby Village Street, Bagby, Thirsk, North Yorkshire YO7 2PH

- The application is made under the Town and Country Planning Act 1990, sections 174 and 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Martin Scott for a full award of costs against Hambleton District Council.
- Appeal A was against an enforcement notice alleging without planning permission, the extension to hangar A and hardstanding adjacent to hangar A.
- Appeal B was against the refusal of planning permission for the extension to Hangar A and proposed hard standing adjacent to Hangar A.
- Appeal C was against the refusal of planning permission for the retention of two temporary hangars on site for use for aircraft storage and ancillary storage of airfield machinery and equipment for a period of 24 months.
- Appeal D was against an enforcement notice alleging without planning permission, the laying of approximately 25 metres of concrete on the runway.
- Appeal E was against the refusal of planning permission for retrospective and proposed concrete alterations to existing runway, reinforced geotextile matting to runway and works to facilitate drainage.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. The PPG says costs may be awarded where a party has behaved unreasonably and it says unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues and examples are given.

4. The applicant's application for costs relates to substantive matters. It is made on the basis that had the Council given more weight to emerging, now adopted policies, in determining the planning applications, the applications should have been approved. Additionally, that the Council misapplied policies in the adopted development plan in their reasons for taking action and in defending the appeals.

5. The National Planning Policy Framework states that local planning authorities may give weight to relevant policies in emerging plans, how much weight is a matter for the decision maker. Although the emerging Hambleton Local Plan (ELP) had reached an advanced stage of preparation, the Council did not address the relevant emerging policies as a material consideration, including what weight if any, to attribute to them. This was unreasonable.

6. However, even if they had attributed significant weight to emerging policy, based on their submissions, it seems highly likely that they would still have reached the same decision. This is because those applications did not include a business plan, including viability assessment, which the Council maintained to be a requirement of Policy EG7 of the ELP.

7. For the same reason, it is unsurprising that the Council did not encourage the applicant to submit revised applications, prior to the enforcement notices being issued, as it is probable that they would have been refused.

8. Furthermore, it follows that, once the planning applications had been refused, the Council were likely to pursue enforcement action in order to safeguard their position.

9. It is evident from my decisions, that I found Policy EG7 of the Hambleton Local Plan Adopted February 2022 to be relevant. However, I found that there is no policy requirement for development, which requires a countryside location, to demonstrate an operational/functional need. Further, even if a business plan is required, there is no development plan policy justification for a viability assessment to be part of such a plan.

10. Although I reached a different conclusion to the Council on the application of Policy EG7, this does not mean that they acted unreasonably. It is necessary to consider if the Council were able to substantiate why it interpreted the policy as it did.

11. The application of planning policy is a matter for the decision maker. In respect of the requirement for a business plan, the Council substantiated why they considered this to be necessary to support the development. They also explained why the addendum to a previous Business Plan did not satisfy them that Policy EG7 was complied with. Their approach was not therefore unreasonable in this instance.

12. For the reasons given, it follows that I do not consider that the Council acted unreasonably in refusing the planning applications and taking enforcement action. Consequently, the appeals could not have been avoided.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Felicity Thompson

INSPECTOR