The Planning Inspectorate

Costs Decision

Site visit made on 20 December 2022

by G C Bayliss BA MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Costs application in relation to Appeal Ref: APP/Y3425/W/22/3300824
Land at Silkmore Lane, Stafford, Staffordshire ST17 4JD

- 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 Harp, Harixon Ltd, for a full award of costs against Stafford Borough Council.
- The appeal was against the refusal of an application to discharge condition 11 of a planning permission for a residential care home.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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 PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

4. The appellant states that when refusing the application, the Council failed to specify in what respect the submitted information in relation to condition 11 was insufficient, thereby failing to substantiate the reason for refusal. Furthermore, they state that the Council, at the Lead Local Flood Authority's request, referred to condition 13 in the decision notice. This is a compliance condition, and it was unreasonable and potentially unlawful for the Council to insist on the submission of information relating to this separate condition before it determined condition 11. It was also unreasonable to refuse to discharge condition 11 based on the changes to the flood zones since the determination of the planning permission. The appellant regards the Council's conduct as tantamount to seeking to frustrate the implementation of the planning permission which it had granted. They state that they addressed all of the requirements of condition 11 and that it should have been discharged.

5. The LFA is a statutory consultee and, as experts on drainage and flood risk, the Council should give significant weight to their comments. However, the Council acknowledged that condition 13 did not require any further information to be submitted and that it did not need to be discharged. They also suggested that even in relation to the changed Flood Zones, it would be unreasonable to

request further information in relation to this condition and that condition 11 could be dealt with separately. However, despite this, it is evident to me that the Council continued to act on the advice of the LFA to link the two conditions. They requested the applicant re-visit the approved documentation referred to in condition 13 following the revision of the Flood Zones and to review the site layout. It is therefore apparent that because the information relating to condition 13 was not revised by the appellant, condition 11 would not be discharged. For the reasons set out in my appeal decision, I have concluded that condition 11 is separate to condition 13 and in determining this application the Council should have solely focussed on whether the applicant's submitted details were adequate to discharge condition 11.

6. From the evidence before me, the appellant responded to the requests for more information from the Council and LFA regarding condition 11 over a significant period which also involved them appointing a second drainage designer. Although the evidence suggests that early on the LFA gave advice as to what further information was required, latterly the LFA focussed on the changes to the Flood Zones and that the documents associated with condition 13 should be addressed first. Ultimately, the Council refused the application to discharge condition 11 but provided no explanation as to why the information submitted was inadequate.

7. Failure to substantiate the reason for refusing the application to discharge the condition and the attempt to link the conditions amounts to unreasonable behaviour. As a result, the appellant has incurred unnecessary and wasted costs in pursuing the appeal. These include the costs of pursuing the appeal, commissioning consultants to provide technical advice and seeking Counsel's opinion.

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

9. 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 Stafford Borough Council shall pay to Mr William Harp, Harixon Ltd, the costs of the appeal proceedings described in the heading of this decision.

10. The applicant is now invited to submit to Stafford 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.

G Bayliss

INSPECTOR