



Costs Decision

Site visit made on 17 June 2022

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2023

Costs application in relation to APP/X0360/W/22/3291510

Land Adjacent to Castle End Road, Hare Hatch, Reading, RG10 9TH

- 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 Mrs Sarah Nash (Nashers Day Care for Dogs) against the decision of Wokingham Borough Council.
 - The appeal was against the refusal of planning permission for 'Change of use of building and land to a mixed use of equestrian and dog day care (retrospective)'.
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Decision

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

Reasons

2. Planning Policy Guidance (PPG) 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 expense in the appeal process.
3. The PPG sets out examples of behaviours relating to procedural and/or substantive matters, whereby the award of costs may be appropriate. Having regard to the advice of the PPG, the applicant submits that the Council has behaved unreasonably in several ways and therefore seeks a full award of costs. I turn to the relevant assertions of unreasonable behaviour below.

Lack of co-operation and provision of reasonably requested information

4. From the evidence before me, requests for further information were made by the Council. Although it would have been preferable for these requests to be made earlier, I do not consider the timeframe in which the further information was sought to be unusual, or unreasonable, for a local planning authority (LPA) that is dealing with a substantial volume of applications.
5. I note that the applicant also requested updates and an opportunity to discuss the application, however, these requests were not met by the case officer. Having seemingly been provided with no insights from the LPA as to its concerns, the refusal of the application came as a surprise to the applicant. I find that the service provided by the Council was unsatisfactory. However, I recognise that the Council did not feel that its concerns could be overcome through discussions/negotiations with the applicant. I am also mindful of the pressures that LPAs are currently facing. Therefore, whilst communication from the Council should have been better, I am inclined to agree that this was unlikely to have altered the LPA's overall view of the proposal. As such, despite

the level of service received, I do not find the Council's behaviour to have been unreasonable.

Failing to give a proper explanation of determining an application within time limits

6. The Council requested an extension of time to determine the application on the day of its original deadline, which the applicant agreed to.
7. I note from the submitted evidence that the extension of time was requested by the Council shortly after the submission of further information by the applicant, which was provided in response to comments received from the local highway authority (LHA). The extension of time was also over the Christmas period and the case officer indicated that the application would not be determined before her imminent period of annual leave.
8. I agree with the applicant that the LPA should have requested the extension of time earlier. However, I suspect that the case officer would have been dealing with a substantial number of matters in the lead up to annual leave. Whilst a proper explanation for failing to determine the application may not have been provided by LPA, it is inferred to by the case officer in her email (dated 22 December 2021). From the correspondence provided, although updates on the application had been requested, the applicant did not explicitly request an explanation of why the application's time limits would not be met. This is despite agreeing to an extension of time.
9. Additionally, given the retrospective nature of the application and that the use has continued during the progress of the application/appeal, the development has not been delayed by the Council's failure to provide a proper explanation for its delays.

Vague, generalise or inaccurate assertions about a proposal's impact and acting contrary to, or not, following well established case law

10. It will be seen by my main decision that I agree with the app that noise does not impact on the openness of the Green Belt due to not having a spatial or visual aspect. To support its view the Council has referred to case law¹ that highlights the word "openness" is open-textured and several factors are capable of being relevant in affecting the openness of the Green Belt. However, the relevant case law still maintained that these factors would have spatial or visual aspects, which noise has not been demonstrated by the Council to possess. As such, no robust evidence has been provided by the Council to demonstrate how noise would impact on the openness of the Green Belt. Furthermore, it has not been shown that the Council undertook a detailed assessment of the impact of noise on the character of the area. I therefore consider that the Council has been somewhat vague and inaccurate in its assertions relating to the noise impacts of the development.
11. However, the Council also refused the application based on the impact of vehicles on the openness of the Green Belt and character of the area. I also reached a different view to the Council on these matters. Nevertheless, the impact of vehicles on openness is a matter of planning judgement and the Council suitably justified its position, linking it to relevant case law and held the proposal up against relevant elements of the development plan.

¹ *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466

12. It has been suggested that the Council's reason for refusal failed to account for advice from consultees. However, the planning officer is not obliged to follow the advice of consultees, provided their position is appropriately justified. Indeed, the planning officer went against the advice of its historic environment officer, in line with the views of the applicant.
13. Although the LHA may not have been concerned by the development's overall level of traffic generation, it is likely that this view was being considered in terms of technical considerations linked to highway safety. The impact of vehicles on the openness of the Green Belt, are matters that the planning officer made a judgement on, and as highlighted above the position reached was sufficiently justified.
14. As demonstrated in my decision, conditions are capable of being imposed limiting the intensity of use at the site (i.e. operational times, number of dogs on site and therefore likely vehicle trips). However, this would not prevent the presence of additional vehicles at the site, which although limited in nature and duration, the Council deemed to harmfully impact on the openness of the Green Belt. The LPA has therefore indicated that it did not feel that the negotiations or conditions could overcome its concerns with the application. Again, whilst I do not agree with the Council's overall judgement on this matter, I do not consider it an unreasonable view to have reached.

Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated as acceptable

15. The applicant referred to an example of an appeal allowed for a similar proposal within the Malvern Hills. It is suggested as demonstrating that the Council has persisted in objections to a scheme or elements of a scheme that the Secretary of State or Inspector has previously indicated as acceptable. However, that Inspector's decision would have been based on the merits of that specific case, which due to its location would have had a different planning context. As such, it does not automatically convey that the current proposal would also be acceptable.

Not determining cases in a consistent manner

16. Reference made by the applicant to a larger 'doggy day care' site immediately to the west of the applicant's woodland has not been supported with details of its precise location or any evidence of it having received planning permission. The Council also state that it has no records of a lawful use of this nature in the locality indicated by the applicant. Even if such a lawful use does exist, the precise site or planning policy context may also differ to the appeal site.
17. In the absence of any detailed information regarding this other site and its planning context, I cannot find that the Council has taken inconsistent approaches to determining cases.

Refusing to enter pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

18. From the evidence before me the application was retrospective in nature and no pre-application submission was made by the applicant.

19. The Council has also identified that the refusal was based on issues that it felt could not be resolved through negotiation or condition, which as set out previously I do not consider to be an unreasonable view. This is despite the findings of my appeal decision.

Conclusion

20. I have found that the Council failed to produce evidence to substantiate all aspects of its reason for refusal, namely the noise impacts of the development. The question therefore arises as to whether the behaviour of the Council has caused the applicant to incur unnecessary or wasted expenses in the appeal proposal.
21. I accept that the applicant has incurred the cost of pursuing the appeal, including the submission of an appeal statement. However, the noise matter alone did not force the applicant's hand into appealing. I am also satisfied that the Council has suitably substantiated its reason for refusal, in respect of the impacts of vehicle traffic on the openness of the Green Belt.
22. The applicant's response to the matter of noise being a reason for refusal appears to have been relatively straightforward. For instance, it has only required short rebuttals within other comments made on the Council's position. It also required evaluation of the same case law and planning policy that was used to rebut the Council's concerns regarding vehicular traffic. From the evidence before me, the applicant promptly and easily rebutted the Council's position on noise.
23. I have also found other aspects of the Council's behaviour less than satisfactory, namely its lack of communication resulting in the applicant being unaware that the proposal would be refused.
24. Nevertheless, in my judgement, the unreasonable behaviour displayed by the Council has not resulted in unnecessary or wasted expense, as described in the PPG.

Lewis Condé

INSPECTOR