



Costs Decision

Site visit made on 20 March 2023

by G C Bayliss BA MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Costs application in relation to Appeal Ref: APP/B3030/W/22/3309438 Windmill Farm, Eagle Road, Spalford, Newark NG23 7HA

- 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 Marietta Pegg, for a full award of costs against Newark and Sherwood District Council.
 - The appeal was against the refusal of an application for a proposed caravan and holiday lodge site including amenities building, associated drainage and roadways.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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 (para. 049) states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal, and vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The Appellant submits that the Council has acted unreasonably, particularly in relation to Reason for Refusal 03 relating to botanical survey work and the likely impact on a nearby oak tree.
4. The appellant maintains that the Council failed to defer making its decision until the botanical survey was available. As the Council suggested that the delayed report could potentially resolve this reason for refusal at appeal, the appellant maintains that this matter could have been dealt with by a planning condition instead of a reason for refusal. Also, had the Council waited for the report then mitigation measures could have been put in place. The appellant suggests that the Council referred to incorrect information regarding the route protection area for the oak tree and did not consider relevant drawings.
5. It is also suggested that the Council failed to consider the evidence of need in the D2N2 documents which supported the development. Furthermore, the Council registered the wrong address and only acted once adjoining landowners complained. Also, the planning officer mistakenly sent the planning agent a signed Delegated Report showing a recommendation for refusal prior to the target date.

6. Government Circular 06/2005 (para. 99) makes it clear that the presence of protected species and the extent to which they would be affected by development should be established before an application is determined. It also suggests that ecological surveys should only be dealt with by condition in exceptional circumstances. Furthermore, the Framework (para. 180) advises that where significant harm to biodiversity cannot be avoided/mitigated or as a last result compensated for, then permission should be refused.
7. The Preliminary Ecological Appraisal indicated that a further botanical survey was required. In my view, this survey should have been completed prior to the submission of the application or at the very least be at an early stage during its determination to inform the scheme. Whilst the Council could have delayed making its decision until the survey was available, the appellant would have been aware of the prescribed timeframe for making the decision. The appellant also should have had time during this determination period to complete and submit the survey during the optimum spring timeframe. In any event, as the Council was refusing the application for other reasons it was not unreasonable for them to make a timely decision.
8. The final botanical survey accompanied by the amended plan submitted at appeal demonstrates that the Council was correct to be cautious regarding biodiversity on the site. In addition, as I have concluded that the development would impose ecological harm, it is evident that a condition/mitigation would not have been appropriate.
9. The application was refused on the grounds of insufficient evidence regarding the route protection area for the oak tree, including the absence of a precise measurement of the tree diameter. The Officer Delegated Report referred to Natural England guidance for buffer zones around veteran trees and the British Standard for measuring stem diameter, but I am unclear as to which information the appellant suggests the Council relied upon was incorrect. The Council was entitled to reach the view that the evidence was insufficient, and in the absence of appropriate evidence, I find that no unreasonable behaviour was exhibited by the Council in this respect.
10. The Council referred to the D2N2 documents in its Officer Delegated Report. These reports cover a wide region and consequently it cannot follow that all developments of a similar nature will automatically be supported. Whilst these documents are a material consideration, they cannot take precedence over the Development Plan and The Framework.
11. It is regrettable that the Council used the wrong address to register the application which triggered unnecessary objections, and the delays in resolving this matter were unreasonable. However, it is evident the Council rectified this matter during the determination period and reconsulted relevant parties. The fact that the Case Officer mistakenly sent a signed Officer Delegated Report to the appellant's agent is also regrettable, but the report was clearly in draft format and the officer rectified this matter swiftly.
12. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision. The appellant had to address those concerns and the evidence of third parties in any event.

Conclusion

13. I therefore conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

G Bayliss

INSPECTOR