



Costs Decisions

Inquiry Held on 14-15 and 17 February 2023

Site visit made on 16 February 2023

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th April 2023

Costs application in relation to Appeal Ref: APP/F4410/W/22/3310101 Former Blaxton Quarry, Mosham Road, Doncaster, DN9 3EJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr T Waddington of Ernest V Waddington Ltd for a full award of costs against the City of Doncaster Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for B2, B8, and E:g employment uses - 31,846 square metres for up to 52 units and parking.
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Decision

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

Reasons

2. Planning Practice Guidance 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 appellant submits that the Council has acted unreasonably in that it failed to provide substantive reasons to justify delaying its determination, and that better communication would have enabled the appeal to be avoided altogether. Moreover, the appellant submits that the Council misapplied Policy 30 of the Doncaster Local Plan (2021) and failed to apply a planning balance exercise. The appellant's view is therefore that the Council has prevented or delayed development which should clearly have been permitted.
4. The appellant contends that the appeal could have been avoided had the Council granted permission subject to a requirement for a legal agreement to supply compensatory habitat in the City. However, the Council's position was that a full Ecological Impact Assessment was required as well as evidence of compliance with the mitigation hierarchy, as is set out in its email to the appellant dated 25 July 2022. It also stated that a Preliminary Ecological Appraisal ('PEA') was "*very unconventional*" in a case such as this. In this regard, the Council's position is supported by the 'Guidelines for Preliminary Ecological Appraisal' (CIEEM, Dec 2017) which state that: "*under normal circumstances it is not appropriate to submit a PEAR¹ in support of a planning*

¹ The guidance refers to a Preliminary Ecological Appraisal Report or 'PEAR', which is used to present the results of the Preliminary Ecological Appraisal.

application because the scope of a PEAR is unlikely to fully meet planning authority requirements in respect of biodiversity policy and implications for protected species". Whilst I note that earlier exchanges discussed potential alternative approaches, those took place before the later advice from the Council's ecologist and the adoption of the Biodiversity Net Gain SPD in September 2022. This latter document is clear that "*in most cases, an EcIA will be required*". In my view, the Council did not act unreasonably such that better communication would have enabled the appeal to be avoided altogether.

5. For the reasons set out in my Decision I do not consider that the Council misapplied Policy 30 of the Local Plan. Whilst it is asserted that no planning balance exercise was carried out, the Council's position at application stage was never formally set out in an Officer Report before the appeal was lodged. However, the Council did set out its view on such a planning balance exercise in an email to the appellant dated 1 July 2022. It subsequently addressed the proposed benefits of the scheme in its appeal submissions and at the Inquiry, including the weight to be attached to them. Accordingly, I do not consider that the Council acted unreasonably in this regard.
6. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Thomas Hatfield

INSPECTOR