



Costs Decision

Site visit made on 15 February 2023

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2023

**Costs application in relation to Appeal Ref: APP/J0405/W/22/3304555
Seven Acre Farm, Aylesbury Road, Aston Clinton, Aylesbury,
Buckinghamshire, HP22 5AH**

- 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 G Coppola (SVG Holdings Ltd.) for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for an extension to a commercial building at Seven Acre Farm Business Centre.
-

Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

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 clarifies that unreasonable behaviour may either be procedural or substantive. Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award.
4. The application for costs by the appellant is based on substantive and procedural grounds in that it alleges the Council acted unreasonably in; - (1) preventing development that should clearly be permitted, based on an incorrect assessment of local and national planning policy relating to development outside of a settlement boundary; and (2) failing to work positively and proactively with the Agent to seek an approval, by not requesting a tree survey whilst the application was still live.
5. In accordance with section 38(6) of the 2004 Act¹ and section 70(2) of the 1990 Act², applications for planning permission must be determined in

¹ Planning and Compulsory Purchase Act 2004

² Town and Country Planning Act 1990 (as amended)

accordance with the development plan unless material considerations indicate otherwise. The starting point of decision-making is therefore plan-led.

Ground 1: Preventing development that should clearly be permitted, based on an incorrect assessment of local and national planning policy relating to development outside of a settlement boundary

6. It will be seen from the appeal decision that I disagree with one of the grounds upon which the Council refused the application, namely that relating to whether it was in an appropriate location. However, I am nonetheless satisfied that it was not unreasonable for it to have formed the conclusion it did based on an objective analysis of the scheme against development plan policy, save for that relating to Policy H1 of the Neighbourhood Plan. In the case of the latter, the Neighbourhood Plan clearly stated that this was a policy developed for housing, which was not relevant to this appeal.
7. In view of this, I consider it unreasonable of the Council to have introduced Policy H1 of the Neighbourhood Plan into its first reason for refusal. The application for costs on this substantive ground therefore partially succeeds.

Ground 2: Failing to work positively and proactively with the Agent to seek an approval, by not requesting a tree survey whilst the application was still live

8. The appellant states that the Council failed to work positively and proactively with them to seek an approval, in that they should have requested a tree survey whilst the application was still live. However, the appropriate time for the appellant to have sought to discuss the proposal with the Council was at the pre-application stage, as outlined by the Framework³ and PPG⁴. In this respect, I note that no pre-application enquiry was submitted by the appellant, despite this service being available to them. I am as a consequence satisfied that the appellant did have adequate opportunity to discuss the current scheme with the Council at the pre-application stage, which might have highlighted any potential areas of concern, but chose not to do so.
9. Furthermore, Section 70 of the 1990 Act states that where an application is made to a local planning authority, it may grant or refuse planning permission. This legislation does not impose a legal duty upon a local planning authority to enter into discussions with an applicant to resolve problems in a 'live' application that would otherwise result in a subsequent refusal of planning permission.
10. This is further reinforced by the PPG⁵ which states that while it is possible for both the applicant and local planning authority to suggest changes to a 'live' application before it has been determined, it is at the discretion of the latter as to whether to accept such changes or determine whether the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted. To my mind, this does not support the view that the Council is required to work proactively with applicants during a 'live' application. The local planning authority is not therefore under any obligation to accept additional application information that would materially change the content of the submission and necessitate a reassessment of the scheme.

³ Paragraphs 39 to 43, National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.

⁴ Paragraph: 001 Reference ID: 20-001-20190315, Revision date: 15 03 2019

⁵ Paragraph 061, Reference ID: 14-061-20140306, Revision date: 06 03 2014

11. Moreover, it seems to me that if local planning authorities were required to work proactively with applicants during a 'live' application to address all matters in dispute, this would then negate the need for any pre-application discussions to take place at all and enable applicants to avoid paying the appropriate fee where a charging regime is in place. It would also enable applicants to evolve schemes without paying an additional fee during the application process, at additional cost to the Council and taxpayer (the Council having received only one application fee to determine the submission). This is not what the Framework and PPG advocates.
12. To my mind, the duty imposed on local planning authorities⁶ to "work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area" does not therefore oblige them to engage in discussions during a 'live' planning application in all circumstances. This would especially be the case for applications where a problem has arisen for which: - (a) the local planning authority does not consider there to be a solution as it relates to an 'in-principle' matter; (b) the submission of additional or amended information would not address all of the reasons for refusal and hence it would not make any difference to the overall outcome; (c) it would necessitate the submission of a materially different scheme and/or additional information materially changing the content of the application to overcome the matters in dispute; (d) where there is insufficient time left within the statutory determination period; and (e) those cases where no pre-application enquiry was submitted which would have given the parties an early opportunity to attempt to resolve the issues concerned.
13. In the current appeal, I would have expected the requirement for a tree survey to have been raised within a pre-application enquiry. However, even if this did not occur, the submission of a tree survey at application stage would not have changed the overall decision as it did not address the other matters in dispute relating to character & appearance and whether the scheme was in an appropriate location. As a consequence, it would have been unreasonable for the Council to ask the appellant to submit a tree survey whilst the application was still live as this would not in any event have prevented the application from being refused.
14. The above duty is therefore discharged in most circumstances by local planning authorities working proactively with applicants at the outset, before a scheme has been finalised and during a collaborative pre-application process where an appropriate and proportionate level of engagement can take place with consultees and neighbours. However, in those circumstances where the Council has been unable to offer such a pre-application service, the current system does allow for it to be discharged through a collaborative process agreed to by both parties via an extension of time to a live planning application or within a Planning Performance Agreement.
15. In view of the above, I am satisfied that the Council did not behave unreasonably in not requesting the submission of a tree survey which resulted in the specified reason for refusal. The application for costs on this procedural ground therefore fails.

⁶ Paragraph 38 of the Framework

Conclusion

16. In view of the above, I find that unreasonable behaviour by the Council resulting in unnecessary and wasted expense has been demonstrated. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in addressing Policy H1 of the Neighbourhood Plan in the first reason for refusal is justified.

Costs Order

17. 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 Buckinghamshire Council shall pay to Mr G Coppola (SVG Holdings Ltd.), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing Policy H1 of the Neighbourhood Plan in the first reason for refusal.
18. The applicant is now invited to submit to Buckinghamshire Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Robert Fallon

INSPECTOR