



Costs Decision

Site visit made on 3 April 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Costs application in relation to Appeal Ref: APP/T1410/W/22/3300077 Land at Tesco Extra Car Park, Lottbridge Drove, Eastbourne, BN23 6QD

- 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 Tesco Stores Ltd and Life Property Eastbourne Ltd for a full award of costs against Eastbourne Borough Council.
- The appeal was against the refusal of planning permission for the re-location of the 'Click and Collect' facility from the car park to the Tesco store with associated works; re-configuration of the car park and internal car park access; the re-location of the recycling area within the car park; the erection of two coffee shops with drive-through facilities (Class E) with associated landscaping, car parking and pedestrian access.

Decision

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

Preliminary Matter

2. The Council did not submit a response to the appellant's application for an award of costs by the deadline of 30 November 2022. Furthermore, no extraordinary circumstances were advanced for an attempted late submission. I have dealt with the application on this basis.

Reasons

3. 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. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.
4. The PPG states¹ that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; and not determining similar cases in a consistent manner.

¹ Paragraph 049 Reference ID: 16-049-20140306

5. The Council refused the application for reasons relating to highway safety, air quality and noise. The Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
6. The Council's refusal reasons on its decision notice are complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan which it would be in conflict with, and cites conflict with the National Planning Policy Framework. However, an appeal statement has not been submitted by the required deadline to support these reasons for refusal. Although, I accept that an attempt was made, but no extraordinary circumstances were advanced for the attempted late submission.
7. Nonetheless, the application subject of this appeal had support from the County Highway Authority and Environmental Protection. Additionally, the Officer Report concluded that planning conditions could be imposed to ensure that unacceptable development could be made acceptable. Consequently, in this instance, I find the Council prevented and delayed development which should have clearly been permitted, having regard to its accordance with the development plan, national policy and other material considerations. The Council failed to produce evidence to substantiate each reason for refusal on appeal. Even if the Council had submitted its statement on time, it refused planning permission on planning grounds capable of being dealt with by conditions, as it was recommended that suitable conditions would enable the proposed development to go ahead. Thus, in these circumstances, it is highly unlikely that the submission of a statement would have overcome the misgivings on this particular matter.

Conclusion

8. For the reasons given above, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a full 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 Eastbourne Borough Council shall pay to Tesco Stores Ltd and Life Property Eastbourne Ltd, the costs of the appeal proceedings described in the heading of this decision, incurred in arguing against the Council's view that the proposal would have a detrimental effect on highway safety, air quality and the living conditions of neighbouring occupiers; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Eastbourne 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.

W Johnson

INSPECTOR