



Costs Decision

Site visit made on 11 July 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2023

Costs application in relation to Appeal Ref: APP/V0728/W/23/3314720 MKM Building Supplies, Limerick Road, Dormanstown, Redcar TS10 5JU

- 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 Ian Harriman for a full award of costs against Redcar and Cleveland Borough Council.
 - The appeal was against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission following the failure of the applicant to submit further information, plans, drawings or other evidence required by a direction made by the local planning authority under section 62 of the Town and Country Planning Act 1990 and Regulation 4 of the Town and Country Planning (Applications) Regulations 1988 for the Change of Use from Building Supplies Depot (Sui Generis) to Self-Storage Facility (Sui Generis).
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 applicant considers that the Council behaved unreasonably in refusing to validate the planning application. This was despite the applicant advising of their firm opinion that shipping containers are not buildings, they are not fixed to the ground and merely rest upon it. The Council was wrong to calculate the planning fee on the basis of the combined 'floorspace' and such 'floorspace' was immaterial to the calculation of the planning fee. Reference was made to a similar planning application submitted to another nearby local planning authority where the sum of £462 had been accepted as being the correct fee.
4. In the applicant's view the Council has therefore prevented or delayed development, failed to produce evidence to substantiate their refusal to validate the planning application and given vague, generalised and unsubstantiated reasons why the planning fee should be based upon floorspace and not a change of use. The planning appeal should not have been necessary, and the applicant has been put to unnecessary expense and has been delayed in commencing the operation of the self-storage facility.
5. The Council's rebuttal sets out that they responded to the agent in relation to the matter of the fee and explained the view that the fee should be based on

the floor space being created and to be used and not solely on the change of use of land.

6. However, there is no actual explanation and reasoning as to on what basis the Council came to the conclusion that the higher fee was required. The crux of the matter relates to whether the shipping containers are buildings, and therefore whether the relevant fee category is that which relates to the erection of buildings and should in such an instance include their floorspace. Whilst this is a matter which could be said to necessitate an exercise of planning judgement, whatever the judgement ultimately is it requires reasoning and explanation for the benefit of the other party. In this case, the applicant was made none the wiser as to why the Council was of the view that the containers are buildings, in contrast to their own view and the supporting reasons they gave that they are not.
7. It was incumbent on the Council to be able to explain and substantiate their position rather than make a definitive statement that the higher fee was required without reason. They have not done so either in the correspondence that has been provided with the appeal or in defence of their decision during the appeal process. It would also appear that they did not respond to the formal Article 12 notice that the applicant served upon them under the terms of the Development Management Procedure Order 2015. As a whole, this represents unreasonable behaviour and has meant that the applicant had no option but to follow the appeal process.
8. Furthermore, the only objection that the Council raises to the proposed development is that relating to what are minor highway matters. I have found that there is no further information required in that respect, but even if the Council had maintained their view that further submissions were needed, these could have easily been requested and the matter resolved during the planning application determination process. That the applicant was not able to do this resulting directly from the matter relating to the fee has led to the delaying of a development for which planning permission clearly would, and should, have been granted.
9. In conclusion, the Council declined to validate the planning application without adequately substantiating their position on not doing so and this has led to the delay of a development that should have been permitted. This represents unreasonable behaviour as set out in the PPG and has resulted in the applicant incurring unnecessary and wasted expense in having to submit an appeal. A full award of costs is therefore warranted. I note that the Council makes reference to the scope of a possible costs award in its rebuttal in terms of the two separate stages of the planning application and the appeal. However, the PPG provides guidance on this matter and it is not therefore necessary for me to address this point in my costs decision.

Costs Order

10. 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 Redcar and Cleveland Borough Council shall pay to Mr Ian Harriman, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to Redcar and Cleveland 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.

Graham Wraight

INSPECTOR