



Costs Decision

Site visit made on 1 August 2023

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Costs application in relation to Appeal Ref: APP/R3325/W/22/3305399 The Willows, Lattiford, Holton, Wincanton, Somerset BA9 8AF

- 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 and Mrs Clements for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of planning permission for the change of use of land to provide a commercial vehicle storage facility (Retrospective).
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Decision

1. A partial award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that awards may be procedural relating to the appeal process, or substantive relating to the planning merits of the appeal. All parties are expected to behave reasonably throughout the planning process, and costs can only be awarded in relation to unnecessary or wasted expense at the appeal. The Guidance makes it clear that costs cannot be claimed for the period during the determination of the planning application, although behaviour of the parties at this time can be taken into account.
4. The application for a full award of costs and the response of the Council have been made in writing and will not be repeated here in any detail. The appellants consider the Council failed to give adequate reasons for refusal with regard to landscape and highway safety, without articulating the planning harm nor demonstrating how the development would be inconsistent with development plan policy. Expert advice was not called for at the Planning Committee, and the Council have been inconsistent in their decision making with regard to similar proposals. The Council have behaved in an unreasonable and unhelpful manner, which has caused unnecessary and wasted expense in mounting the appeal.

5. My decision explains that I have found substantive reasons for dismissing the appeal. When refusing an application the Council is obliged by the Guidance to make reasons for refusal clear. In this case the Council refused the scheme for three reasons and each was clear and precise, including referencing relevant development plan policies.
6. The first reason for refusal specified that it was the size and nature of the storage in a countryside location that resulted in harm to the area, and that such harm was contrary to development plan policy. Whilst noting that the Council's appeal and costs case suggests working with the appellants in a future application, this would be a matter for the parties to consider outside of the appeal process. The provision of a Landscape and Visual Appraisal for the appeal sought to address the reason for refusal, albeit the submission of such a document for the appeal rather than at the original application stage was a decision made by the appellants. Moreover, for the reasons given in my decision I have found substantial harm that would not be overcome by conditions.
7. With regard to effluent and waste, a cautious approach with regard to pollution and contamination would have been reasonable given the size and type of units within the storage area and the presence of a drainage ditch. In the absence of details regarding drainage, effluent and waste protection measures, there was also evidence from third parties, and it was not unreasonable of the Council to require additional information. Furthermore, as the storage is already occurring, imposing conditions for environmental protection may not be achievable, thereby failing to accord with the requirements of the National Planning Policy Framework with regard to conditions. As such it was not unreasonable of the Council to refuse the scheme.
8. The proposed access was a matter that was identified as being acceptable, subject to conditions suggested for reasons of highways safety. Notwithstanding this, the Council diverged from expert opinion, and in doing so did not explain why the conditions suggested would fail to ameliorate any harm. The reason for refusal is clear and precise, but the storage is already taking place, albeit using a different access, and the extent of the movements into and out of the site would have been evident. The Council is not bound to accept the recommendations of its officers, but if their technical and professional advice is not followed then reasonable grounds for taking a contrary decision need to be provided supported by relevant evidence. Whilst noting the Council's concerns regarding the number of suggested conditions and the evidence of third parties, the appellants provided additional expert evidence for the appeal. The Council's preference would be for the submission of a new application, but irrespective of this, it has not been explained for this appeal why the Council considered additional information was required nor why suggested conditions would not be appropriate.
9. The appellants have also raised concerns regarding the consistency of the Council's decision making. The cases cited show a variety of

differences with the appeal scheme. One was for caravan storage within a barn (ref:18/01741/COU), whilst the other (ref:22/00536/COU) was for a much smaller area of storage closely related to a variety of large agricultural buildings. For whatever reasons the Council permitted these applications, there are significant differences between them and the appeal case. Consequently, it does not follow that such comparisons determine approval of the appeal scheme.

10. Reference has also been made by the appellants to the conduct of the Council regarding the processing of the application, including not requesting additional information. However, the application was recommended for approval by the Council's officers based on the evidence provided. Irrespective of the Council's subsequent decision, for the purposes of this application I am obliged to consider the case as required by the advice in the PPG, and I have no evidence before me that the Council behaved unreasonably at the time of the planning application.
11. The consideration of applications involves matters of judgement that are at times finely balanced based on complex evidence. In this instance the case raises several considerations, and the Council gave a different weight to these issues than the appellants with regard to matters of character and appearance and waste and effluent. However, the Council failed to justify the reason for refusal regarding highway safety, nor was it explained why conditions would not overcome any harm.
12. Consequently, I find that unreasonable behaviour resulting in unnecessary and wasted expense as described in the Guidance has been demonstrated and a partial award of costs is justified.

Costs Order

13. 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 South Somerset District Council shall pay to Mr and Mrs Clements, the costs of the appeal proceedings described in the heading of this decision with regard to the matter of highway safety; such costs to be assessed in the Senior Courts Office if not agreed.
14. The appellants are now invited to submit to South Somerset District 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.

J J Evans

INSPECTOR