



Costs Decision

Hearing held on 13 July 2023

Site visit made on 14 July 2023

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2023

Costs application in relation to Appeal Ref: APP/K3415/W/22/3313721 Bromley Hayes Garden Centre, Shaw Lane, LICHFIELD, WS13 8HW

- 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 Lichfield District Council for a partial award of costs against Land and Water.
 - The appeal was against the refusal of planning permission for Demolition of existing building consisting of a retail garden centre (Class E) and redevelopment of the site to provide a mixed use of offices, storage and ancillary industrial uses.
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Decision

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

The submissions for Lichfield District Council

2. The costs application was submitted in writing with the point being made orally at the Hearing that had the parties been able to agree on reason for refusal 1 (the location of development), the balance may have gone in the appellant's favour.
3. The Council applies for a partial award of costs on the basis that the appellant's behaviour has been substantively unreasonable, in particular by refusing to cooperate or engage during the planning application stage, in order to address the technical issues which have led to the refusal of the application; and progressing to appeal a development which is clearly not in accordance with the development plan, with inadequate supporting evidence or material considerations to indicate that an alternative decision should have been made.

The response by Land and Water

4. The response was made in writing.
5. The appellant refers to timelines informing the approach to decision making and highlights that the Council were intending to refuse the application on a number of matters without giving sufficient opportunity for further technical work to take place.

Reasons

6. 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.

7. There could have been a greater level of dialogue and co-operation between the parties, led primarily by the appellant, as part of seeking to address the Council's concerns on a range of technical matters. That may have resulted in agreement on some topics covered within the appeal such that they did not need to be aired. However, there is no guarantee of that.
8. The appellant relied heavily on the various documents produced in support of the previously permitted scheme as part of the appeal. In particular, the transport and noise matters were not supported by up-to-date specific evidence and more could have been done in relation to biodiversity matters related to bats. Nevertheless, it is clear that the appellant was of the view that the documentation submitted was adequate and did not submit it to the appeal as part of some sort of flight of fancy.
9. From all I have read and heard, the Council intended to refuse the application whilst certain technical matters were in the process of being addressed. It is also evident that a number of consultees were minded to find the proposal acceptable initially but changed their stance late on in the process.
10. I find the approaches of both parties to be contributory factors in the matters it was necessary to address in the appeal. For this and the above reasons, I see nothing to lead me away from a conclusion that the appeal would have taken the form it did.
11. Therefore, the appellant has not demonstrated unreasonable behaviour and unnecessary or wasted expense has not occurred and an award of costs is not warranted.

H Baugh-Jones

INSPECTOR