



Costs Decision

Hearing held on 14 February and 15 June 2023

Site visit made on 14 February 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Costs application in relation to Appeal A Ref: APP/X0360/C/20/3253078 Land at Heartwood, Sandhurst Road, Finchampstead RG40 3LT

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Lucas Dutton for a full award of costs against Wokingham Borough Council.
 - The appeal was against an enforcement notice alleging the change of use of the land for the storage, distribution and transfer of arboricultural waste.
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Costs application in relation to Appeal B Ref: APP/X0360/W/20/3253081 Land at Heartwood Lodge, Sandhurst Road, Wokingham, RG40 3LT

- 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 Lucas Dutton for a full award of costs against Wokingham Borough Council.
 - The appeal was against the refusal of planning permission for the change of use to a mixed use of storage of agricultural products, forestry products and green waste.
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Decision

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

The submissions

2. The reasons given for the costs application are summarised as follows:
 - The Council and the officer allocated to deal with the planning application misunderstood the use of the site and the relevant issues;
 - The Council failed to engage with the applicant and he was not given the opportunity to address the Council's concerns;
 - The Council failed to review their case following the submission of the appeals and at the various stages through the appeals;
3. I have had regard to the Council's response in reaching my decision.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance on Appeals (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.

5. The PPG provides examples of unreasonable behaviour on the part of the local planning authority. The applicant has referred to examples of unreasonable behaviour suggested in paragraphs 047, 048 and 049 of the PPG, including:
- 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;
 - refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - before issuing the enforcement notice, failure to carry out adequate prior investigation;
 - lack of co-operation with the other party or parties;
 - acting contrary to, or not following, well-established case law; and
 - not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
6. One of the main themes of the applicant's case is that the Council failed to understand the nature of the development that was taking place on the site and the nature of the proposed use of the site. He says that the Council failed to undertake a proper investigation before the enforcement notice was issued and that it did not engage with the applicant during the planning application and enforcement investigation.
7. On the matter of the Council's understanding of the development, I can agree with the applicant to a degree. Throughout the appeal and the hearing, the Council maintained that there is no ongoing forestry use of the site. Whilst it may be the case that there is no active felling taking place, I have concluded that a forestry use of the site continues with the growing of restocked trees and their protection and maintenance. I cannot regard this activity as anything other than forestry. As such, I am surprised at the Council's position on this matter, particularly as its determination of the application subject of Appeal B was on this basis¹.
8. I find the Council's defence of its position on this matter to be unreasonable and some hearing time was spent on this matter, particularly with regard to the ground (b) appeal for Appeal A.
9. Notwithstanding the above, the Council's objections to the development do not hinge on whether or not the site is used for a forestry use. Its objection is to the other element of the mixed use that is subject of Appeal A and proposed for Appeal B.

¹ Reference to a forestry use is included on the description of development stated on the decision notice.

10. On this matter, there was no dispute that the storage and transfer use is not an incidental use and that it operates as a commercial enterprise. At the hearing the applicant provided further clarification of the current activities on the site (i.e. the Appeal A development). He confirmed that the development subject of Appeal B is the same as that subject of Appeal A, but that it included agricultural products. He also put straight the confusion in his evidence with regard to the reference to agricultural products, clarifying that no agricultural products are stored at the site at present and that the proposal relates to a certain type of agricultural product².
11. I agree that the Council could have taken greater steps to clarify the above matters with the applicant during the course of the determination of the application and the enforcement investigation. This might have avoided the need for some time to be spent at the hearing discussing these matters. However, the development subject of both appeals includes an element of commercial use and the site is located outside of the settlement limits where such development is controlled. Whether or not the development complies with the relevant development plan policies and the National Planning Policy Framework (the Framework) on the location of the development was a matter of judgement in this case. Indeed, the length of the section of my decision relating to this matter is reflective of this. I am satisfied that the Council provided adequate justification for its refusal of the development and issue of the notice, having had regard to the relevant planning policies and guidance.
12. I acknowledge that the Council may not have taken the proper approach to the consideration of a temporary permission in the planning balance. The Planning Practice Guidance on the Use of Conditions advises (paragraph 014) that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. Whilst this is noted, the first main issue in this case relates to the acceptability of the location of the development, which is fundamental to the principle of the development. Accordingly, I cannot see that the Council would have reached a different conclusion on this first main issue, even if it had properly considered imposing conditions or the grant of a temporary permission in the planning balance.
13. Having regard to the above, whilst there may have been an element of unreasonable behaviour on the part of the Council in this case, I cannot conclude that it prevented or delayed development which should clearly be permitted.
14. I acknowledge that reference in the enforcement notice to the area of the site used for storage may well have been inaccurate. However, the effect of the storage activity on the character and appearance of the site and surrounding area is again a matter of judgement. Whilst I have not agreed with the Council on this matter and have found that the use does not have an urbanising effect, I do not consider the Council to have been unreasonable in the position it took on this matter.
15. The Council may have misunderstood the relevance to the appeals of principles established in some of the caselaw referred to by the applicant. Save for its consideration of a temporary consent, which I consider above, I do not

² i.e. crop yields where the crop has been grown for use as a biofuel to be used for energy production.

consider its misunderstanding to be the same as acting contrary to, or not following, well-established case law.

16. I am mindful that the sitting time for the hearing extended over 2 days, rather than being dealt with on the single day allocated. I have identified an element of unreasonable behaviour on the part of the Council and note that some hearing time was spent as a result of this. However, this time was limited and did not mean that the second day of the hearing could have been prevented.

Conclusion

17. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

J Moss

INSPECTOR