



Costs Decision

Hearing held on 15 February 2023 and 19 July 2023

Site visit made on 16 February 2023

by M Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2023

Costs application in relation to Appeal Ref: APP/D3505/W/22/3306364 First Grade Recycling Systems Ltd, Ivory House, Crossways, Cockfield, Suffolk IP30 0LN

- 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 First Grade Recycling Systems Ltd for a full award of costs against Babergh District Council.
 - The appeal was against the refusal of planning permission for the erection of new workshop building with the existing access to the site from the A1141 upgraded.
-

Decision

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

The submissions for First Grade Recycling Systems Ltd

2. The costs application was submitted in writing. It alleges substantive and procedural matters which amount to unreasonable behaviour resulting in wasted expense in the appeal process. The applicant states that the reason for refusal is not supported by substantiated evidence. Moreover, the Council did not consider the site unsustainable when it granted planning permission in 2021, and there have been no material changes in circumstances which warrant a different view now.
3. Furthermore, in refusing planning permission, the Council did not give weight to the benefits of the proposal, which are material considerations, nor did it interpret employment policies in the development plan either correctly, or in some cases, at all. In respect of alternative sites, the Council has made no serious attempt to establish that other sites are suitable or available now.
4. The Council failed to co-operate, responding after the deadline for submission of the Statement of Common Ground (SoCG). They also refused to include areas of disagreement within the SoCG, whereas to do so would have aided the appeal process.

Reasons

5. Parties in planning appeals normally meet their own expenses. However, 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.
6. Whilst the applicant did not necessarily agree with the reasoning relating to the quashing of the original planning permission, it nevertheless consented to the Order, and the Council cannot be faulted for reassessing the planning

application afresh in light of the High Court decision. In any event, I do not accept the applicant's assertion that the proposal would address the requirements of paragraph 85 of the Framework, irrespective of the allegation that the Council's change in tack, in subsequently refusing a planning application that was previously approved, was unwarranted.

7. Even if I was to accept the applicant's position that the Council's officer report was deficient in places and failed to have regard to the benefits of the scheme and policies in support (which is contested by the Council); as set out in my appeal decision, I ultimately concluded that the development would not be in accordance with the development plan, and the appeal should be dismissed. As a result, this appeal could not have been avoided and the Council's decision to refuse planning permission was warranted.
8. PPG sets out that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application¹.
9. Furthermore, I disagreed with the Council over the relevance of several policies and the weight to be attributed to some of the benefits and harms. However, these factors did not undermine the Council's case that planning permission should be refused, which I ultimately agreed with, and I also found conflict with those policies stated in the Council's decision notice.
10. In relation to alternative sites, as set out in my appeal decision, the applicant's assessment did not constitute a comprehensive independent analysis of alternative sites. Based on limited written analytical appraisal of each of the alternatives pursued by the applicant, the Council were justified in questioning the veracity of the evidence put forward. Moreover, whilst the SoCG provided limited detail on areas of disagreement, the Council and appellant provided an agreed list of contested and uncontested alternative sites, which narrowed the appeal's focus.
11. Whilst I agree that the SoCG would have benefited from clarity over the precise areas of disagreement, each of the submitted statements of case clearly set out the position of each main party in relation to the appeal. In addition, appeal submission deadlines were adhered to. In any event, there will inevitably be circumstances where parties disagree over the contents of a document which is predicated on a case where the overall views as to whether planning permission should be granted are opposing. That the applicant had to repeat points that could have been included in the SoCG, and any deficiencies associated with the document attributable to the Council, does not constitute unreasonable behaviour which resulted in wasted expense, for the combined reasons set out.
12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Woodward INSPECTOR

¹ PPG Paragraph: 050 Reference ID: 16-050-20140306