
Costs Decision

Hearing Held on 25 October 2023

Site visits made on 24/25 October 2023

by J Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

**Costs application in relation to Appeal Ref: APP/F1610/W/23/3323604
Boldridge Brake, Crudwell Lane, Long Newnton, Tetbury, Gloucestershire
GL8 8RT**

- 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 Melcourt Industries Limited for a full award of costs against Cotswold District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the extension to yard used for storage of horticultural products.
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Decision

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

The submissions for Melcourt Industries Limited

2. The appellant's costs claim contains 6 grounds of claim, although they have subsequently withdrawn the sixth one of these. They are therefore 5 grounds left to consider and I will deal with each in turn, in each case giving a brief gist of the appellant's position.
3. Ground 1: The appellant considers that The Council failed to correctly reproduce the Local Highway Authority's (LHA) technical reason for refusal and the committee's reason for refusal.
4. The reason for refusal in the December 2022 Planning and Licencing Committee minutes differs from the reason for refusal on the decision notice. The minutes pertaining to the December committee specifically mentions the B2 use of the proposed development but this is not reflected in the actual published reason for refusal. The committee's given reason is grounded upon the incorrect assumption that the appeal proposal would gain a B2 land use classification.
5. Ground 2: The Council failed to disclose relevant evidence and misrepresented data. The LHA's traffic predictions in their revised recommendation bear no relation to the appeal proposal and are based on an analysis of trip rates associated with B2 industrial buildings rather than the outside storage of horticultural products. Furthermore, the TRICS data was not shared in detail with the appellant, their agent or the committee members, contrary to the TRICS user guide and best practice.
6. Ground 3: The Council failed to follow its own guidance in relation to the protocol for site inspection briefings. The credibility and probity of the Council's

reversed recommendation is also in doubt due to the timing of the recommendations, given that there was no change to the proposal before them.

7. Ground 4: The Council failed to cooperate with the appellant in the immediate lead up to the December Committee. The Council failed to advise the appellant of the reversed recommendation until the day before the committee meeting, which was 3 working days after it had been reversed. This left the appellant with very little time to question this decision. A more correct approach would have been to defer the application and share the LHA's evidence with the appellant. This could have resulted in the appeal being avoided altogether.
8. Ground 5: The Council refused planning permission on a planning ground capable of being dealt with by a condition, which was in itself contrary to past decisions on the site (ground 5). Six years previously the Council accepted that a similar yard extension related to the business could be restricted to B8 use by the imposition of a suitable condition. The Council have therefore acted in an inconsistent manner.

The response by Cotswold District Council

Ground 1

9. The draft reason for refusal was circulated to members as part of additional pages prior to the December Committee meeting. It is upon that wording that the decision was made by members, with no formal amendments tabled during the debate. There was nothing unreasonable about the Councils' conduct in this regard.
10. The Councils' position regarding the land use is that the proposed development would be for ancillary storage purposes to the B2 use of the site, and not a standalone B8 use. The Council had sight of the Opinion from Counsel upon this matter that has been submitted to PINs by the Parish Council, and this opinion affirms the Councils' stance.

Ground 2

11. The use of the TRICs data by the LHA relating to B2 use of the site is fully justified and is once again supported by the Opinion of Counsel.

Ground 3

12. The allegations made within this part of the costs application are without any foundation, and made without first hand knowledge of the discussion held at the Sites Inspection Briefing (SIB). The SIB was held on 30 November 2022. The preceding day the case officer learnt that the recommendation by the LHA was to be amended to that of refusal, following further consideration by senior officer at Gloucestershire County Council. This was imparted to members at the SIB when the application was being introduced to them when stood next to the appeal site. The SIB proceedings were held fully in accordance with the normal protocols and procedure, and any insinuation to the contrary is incorrect.
13. Regardless of the procedures followed, there is no evidence of any unreasonable behaviour on the part of the Council.

Ground 4

14. This is wholly refuted. The change in recommendation was made late in the day, but members clearly considered that they had sufficient information to make an informed decision, and having viewed the appeal site and local highway network did not disagree with the recommendation and the reason for refusal put before them.

Ground 5

15. Officers were aware of the previous decision and this was discussed internally. It was considered that the view formed previously as erroneous, and that this error should not be repeated. Once again it is noted that the Opinion of Counsel concurs with this assessment.

Reasons

16. I have considered this application for costs in the light of the Government's Planning Practice Guidance (PPG). This advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority are required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹.
17. In relation to substantive behaviour they include unreasonably refusing planning applications and promoting vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. In relation to procedural behaviour, they include a lack of cooperation, delay in providing information, or introducing fresh and substantial evidence at a late stage necessitating an adjournment.
18. The costs claim by the appellant stems largely from what they consider to be the volte-face by the Council in the run up to the December committee meeting. The appellant has identified 5 possible instances where the Council have acted unreasonably and I will deal with each in turn, although several are conflated by the issue of whether or not the proposed development would be Use Class B2 or B8.

Ground 1

19. The committee report of 7 December 2022 specifically mentions that the application site was intrinsically linked to the adjacent ancillary commercial site, and goes on to state that *should the application be approved, it would fall under B2 commercial use and potentially increase the (double) the number of HGV movements*.
20. The reason for refusal (RfR) given on the Council's decision notice does not mention the Use Class but states that the proposed development would be *an ancillary storage area to the established B2 use*. The RfR goes on to make clear that the impact of the proposed development would be unacceptable in respect

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

of the safety and operation of the public highway and that the proposed mitigation measures would not overcome their concerns.

21. It is not altogether uncommon for Council's to change the wording of a RfR from that given at committee. Furthermore, whilst the appellant contends that the assumption of a B2 use is erroneous, this is not a given, with the Council having had sight of the Opinion of Counsel, via the Parish Council. I therefore consider that the Council has not acted unreasonably in this instance.

Ground 2

22. The LHA traffic predictions are based on the TRICs database which is a recognised industry standard. Once again, this section of the cost's application is to a large extent predicated on an erroneous use of the B2 Use Class, which I consider has not been evidenced. Furthermore, whilst it is unfortunate that following a long period of negotiations between the Council and the appellant the decision was changed, I am not persuaded that the Council has a duty to share every bit of evidence with the appellant prior to a decision being made.

Ground 3

23. The Site Inspection Briefing (SIB) held on 30 November 2022 was attended by a representative of the Highway Authority. The protocol for Site Inspection Briefings (SIB) makes clear that the attendance at a SIB may be Full Committee, or Panel, and that Ward Members can also be invited to attend. Whilst the appellant contends that third parties must not be present, this is not explicitly stipulated in the Article 9 of the Planning and Licencing Committee.
24. The Council accept that the change of stance by the LHA was imparted to members at the SIB meeting. Whilst the appellants consider that have been contraventions of the SIB protocol these are somewhat nuanced and are not matters for a planning costs application. There are other avenues of pursuit open to the appellant in this matter.

Ground 4

25. Whilst it is unfortunate that the appellant was surprised by the decision of the Council, there is a large body of evidence to show that the Council had interacted with the appellant throughout the application process. I am not therefore persuaded that lack of contact from the Council in the immediate runup to the committee meeting can be construed in itself as unreasonable behaviour.

Ground 5

26. This once again returns to the question of the Use Class of the site. Council's do have a duty to deal with planning applications in a consistent manner, and it seems clear that this has not happened, as the previous permission for a storage area on the site was granted with condition limiting to B8 use.
27. It has to be established therefore if there are clear and justifiable reasons for this changed stance. The Council consider that the previous decision was made in error and state that they did not wish to repeat this error. The Opinion of Counsel is once again presented as a reason for this changed stance and once again it seems that the Council were put in an invidious position. Had they continued with the previous stance then they would have been seen as in

contravention of an Opinion by Counsel. That they elected to go with that Opinion cannot to my mind be construed as unreasonable behaviour.

Conclusion

28. In light of the above I consider that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated, and an award of costs is not therefore justified.

John Wilde

Inspector