



Costs Decision

Site visit made on 6 February 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2023

Costs application in relation to Appeal Ref: APP/P5870/W/22/3297165 Brook House, 5 Kimpton Road, Sutton SM3 9QL

- 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 New Yard Services for a full award of costs against the Council of the London Borough of Sutton.
 - The appeal was against the refusal of planning permission for the demolition of the existing buildings and erection of new enclosed waste management and waste transfer facility with changes to vehicular access and parking.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the 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.
3. Paragraph 049 of the PPG gives examples of unreasonable behaviour which may give rise to a substantive award of costs against a local planning authority¹. These include:
 - "Not determining similar cases in a consistent manner";
 - "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";
 - "Refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal"; and

¹ Reference ID: 16-049-20140306

- “Not reviewing their case promptly following the lodging of an appeal against refusal of planning permission [...] as part of sensible on-going case management”.

The list of reasons within the PPG is not intended to be exhaustive, but the applicant’s case falls broadly within the scope of these examples.

4. The applicant objects to the Council’s approach to the proposed development, and earlier incarnations of it, over a period approaching three years. The planning application which was the subject of this appeal was submitted in January 2021, and refused in October of the same year. Before that, planning applications had been submitted in March 2019² and September 2019³; these were withdrawn by the applicant in June 2019 and January 2020 respectively. There is very limited information before me in respect of those first two applications; I have been provided with correspondence from the Council to the applicant indicating that the second was considered unacceptable in principle “as it [would lead] to the loss of industrial floorspace”.
5. The decision notice refusing planning permission for the appeal scheme did not directly refer to industrial floorspace, although the Council’s concern about a loss of industrial land, the demand for which exceeds supply, was apparent from its officer report. The Council’s response to the claim for an award of costs pointed out that “it is not unusual or unreasonable for different case officers to deal with applications on the same site, or for officers to change during the course of an application”. That may be true, but it would not amount a justification for making radically different decisions in similar cases. However, the first two planning applications did not proceed to determination, and the evidence which has been put before me does not conclusively demonstrate that the Council’s advice was inconsistent or decision-making has been inconsistent to such an extent as to be unreasonable. Beyond this, I do not need to address here the reasons for which the planning application in this appeal were dismissed; they are dealt with in my main decision.
6. Following the refusal of the appeal planning application, the applicant’s agent contacted the Council by e-mail on 9 November 2021 inviting them to explore “the potential for a fresh application” for the appeal site “more directly linked with [the applicant’s] waste-related operations at Unit 12, Sandiford Road, SM3 9RD by way of s.106 Agreement options”. A follow-up e-mail to the Council on 24 November sought confirmation in respect of that proposition, but also raised the prospect of the applicant submitting a unilateral undertaking (“UU”) as part of a planning appeal. These planning obligations would have been intended to address the Council’s concern that the proposed development would have created an additional – rather than a relocated – waste facility. The Council responded on 30 November 2021 that “a draft s106 agreement can be submitted with [a fresh] application”, and that the applicant would be “welcome to submit a UU or s106 agreement with any appeal”.
7. The Council’s response to the applicant’s “offer” in November 2021 had been brief and to the point, perhaps even terse. However it was not, in my view, inaccurate, obstructive, or otherwise unreasonable. Regardless of the Council’s response, it would have been open to the applicant to prepare a UU for submission with the appeal. However, when the appeal was submitted on

² LPA Ref: DM2019/00399

³ LPA Ref: DM2019/01325

18 April 2022, none was provided. The questions of whether the proposed development would have led to the creation of an additional waste facility, and whether this could potentially have been remedied by a suitable planning obligation, are addressed in my main decision.

8. Planning permission has previously been granted for the demolition of the buildings on the appeal site and the erection of a new warehouse building⁴, with a built form the applicant describes as “virtually indistinguishable” from the appeal scheme. The Council’s officer report stated that the 2018 permission had expired, though the Council later confirmed that it had in fact been implemented. The applicant therefore suggests that the Council had “clearly failed to recognise or accept that imposition of many of the suggested conditions in the event of the Appeal being allowed actually fell away by virtue of applying to a new building already started without those conditions”.
9. I have been provided with very limited information in respect of the 2018 permission, including any conditions which had been imposed (and the reasons for them). Had I allowed the appeal, however, a new planning permission would have been granted, and it is normal for the Council to suggest conditions in those circumstances. The error in the Council’s officer report is clearly unfortunate, but on my reading of all the evidence which has been put to me appears unlikely to have had a significant bearing on its decision. During the appeal the Council’s evidence was, for the most part, directed towards the principal disputed matters, none of which in my view could be said to have fallen away as a result of the 2018 permission having been commenced. It follows that I also cannot find that this demonstrates that the Council has acted unreasonably.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector

⁴ LPA Ref: LPA Ref: A2017/78367