



Costs Decision

Site visit made on 1 November 2023

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 16th January 2024

Costs application in relation to Appeal Ref: APP/H4315/W/23/3318871 Land Plot Adjacent to Electrical Substation, Gorsey Lane, Clockface, Bold, St Helens, Merseyside WA9 4FZ

- 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 St Helens Metropolitan Borough Council for a full award of costs against Dr Trevor Smith.
 - The appeal was against the refusal of planning permission for the erection of one detached country house dwelling.
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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 (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. St Helens Metropolitan Borough Council is seeking a full award of costs based on substantive matters. The Council asserts that the appellant's behaviour was unreasonable as the appeal had no reasonable prospect of succeeding. It advises that this is due to the proposal not being in accordance with the development plan and no other material considerations advanced indicating the decision should have been made otherwise. The specific reasons are: the appeal site's designation in Site 4HA and corresponding conflict with Policy LPA04.1 of the St Helens Borough Local Plan Up To 2037 (July 2022) (LP); a lack of evidence of the highway access landownership or any access rights, and a lack of the provision of an adequate ecological assessment.
4. Irrespective of the main parties' differences regarding the draft LP's consultation and examination, the appeal site is designated in allocated Site 4HA. Its allocation requires the provision of a supporting comprehensive master plan with any application.
5. However, while the requirements of the master plan are listed in the LP's policies, the Council had not started the formal master planning process at the application stage. The Council states in the Delegated Officer Report that it intended to prepare a Supplementary Planning Document (SPD) to guide and inform subsequent planning applications on Site 4HA. The SPD and any associated master planning need for the appeal site were therefore not available to the appellant. Furthermore, limited detailed justification has been given for the inclusion of the appeal site in the LP's preparation and examination stages. Nor was this provided in any detail to the appellant at the

- application stage. The Council did advise the appellant of the designation and its concerns regarding this but, it only indicated that the proposed development could (my emphasis) prejudice the outcome of any future master planning process.
6. When taken in this context, and considering the appeal site's small size compared to Site 4HA, and the appellant's contention that the landowner had not agreed to or accepted the inclusion of the land, the appellant was entitled to believe that this was not a hopeless case and that it should be tested at appeal.
 7. Even though there was conflict with the development plan, the appellant advanced a variety of other material considerations to demonstrate the appeal site would not prejudice the outcome of any future master planning process or the development of Site 4HA. I therefore do not find this represents unreasonable behaviour by the appellant.
 8. In terms of the land ownership or right of access, the land required for the proposal's highway access, including the visibility splays and footpath, was shown to fall outside of the red line boundary on the location plan. The appellant did, throughout the application stage, try to proactively resolve this matter by providing revised plans and information requested. As part of this the appellant advised that the landowner for the appeal site also owned the land between it and Gorsey Lane. The appellant further confirmed that the landowner agreed to the access requirements and provided an email confirming this.
 9. The Delegated Officer Report raises the concern regarding the red line boundary and stated that the appellant did not provide evidence of the ownership or any rights to access the land. The report did not make any specific reference to the landowner's confirmation provided. The Highway Authority did comment on the landowner confirmation and requested a clearer ownership plan. It also maintained its objection. The Council did advise the appellant on 30 January 2023 that as there was no further information to address the 'outstanding highway aspect', the application was being recommended for refusal. However, this did not provide any reference to the provided landowner confirmation. Furthermore, evidence that the Council, as the determining authority, considered the landowner confirmation in its reason for refusal has been presented.
 10. Consequently, while it is clear from the Council's appeal statement that it required an ownership plan, this was not sufficiently clarified at the application stage. The appellant was therefore not aware that the landowner confirmation would not address the reason for refusal, or that there was no reasonable prospect of this element of the appeal succeeding. I therefore find that this matter does not demonstrate unreasonable behaviour by the appellant.
 11. With respect to ecology, the requirements for a Preliminary Ecological Appraisal and Habitat Regulations Assessment were advised by Merseyside Environmental Advisory Service (MEAS) on 7 December 2022. The appellant was advised by the Council of these requirements. This also highlighted that they were required prior to determination.
 12. The appellant indicated no reluctance to complete the reports and surveys but, due to the risk of the application being refused, was not keen to complete

these at the application stage. To mitigate this, the appellant provided additional supporting information and requested consideration of the use of conditions. I note that there were various discussions between the appellant, Council and MEAS. While the full details of these have not been provided, I note that the appellant consulted MEAS on 22 January 2023 requesting if, based on the existing ecological information, the surveys and reports could be conditioned. The Council did request an update regarding this matter from MEAS on 27 January 2023 and also advised the appellant on 30 January 2023 that as there was 'no further information to address the outstanding ecology aspect', the application was being recommended for refusal. MEAS did respond to both the appellant and the Council on 1 February 2023. However, this was after the date of the Council's decision.

13. While the Council did raise the ecological requirements on several occasions with the appellant and my decision concurs with the Council's concerns regarding this matter, I am also mindful that the appellant was not professionally represented or advised. As such I consider that some allowance for the appellant's lack of understanding of ecological requirements must be taken into account. The Council needed to clearly explain the ecological requirements and reasons for not accepting the appellant's request for the use of a condition.
14. While the MEAS's 1 February 2023 response did advise that a condition was not possible for the surveys or reports, the Delegated Officer Report did not refer to this. I note that the Delegated Officer Report did state that the development proposal 'must be supported by an Ecological Appraisal' and also 'a Preliminary Ecological Appraisal (PEA) that meets BS 42020:2013 is required prior to determination'. However, no reference to the appellant's request for the details to be conditioned was noted. It is clear in the Council's appeal statement that it agreed with the MEAS's requirements and considered a condition unacceptable. However, evidence that this view was explained to the appellant has not been provided. In my view, there was a lack of clarity on the Council's position regarding this matter at the application stage. The appellant was therefore not clearly aware that a condition could not address the ecological reason for refusal or that there was no reasonable prospect of this element of the appeal succeeding. I therefore find that this matter does not constitute unreasonable behaviour by the appellant.

Conclusion

15. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and thus an award of costs is not justified.

J Symmons

INSPECTOR