



Costs Decision

Hearing held on 27 February 2024

Site visit made on 27 February 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2024

Costs application in relation to Appeal Ref: APP/K0235/W/23/3332469 Land south of the A428, Wyboston Lakes Complex, Great North Road, Wyboston MK44 3AL

- 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 David Barford on behalf of Wyboston Lakes Ltd for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of outline planning permission with all matters reserved except for access for a business park development with up to 23,400 m² of floor space, the construction of new access onto the A428 incorporating a signalised pedestrian/cyclist crossing, and new strategic landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for David Barford on behalf of Wyboston Lakes Ltd

2. The costs application was submitted in writing. The following additional points were made orally: Bedford Borough Council Local Plan 2030 (LP) Policy 73 has been misinterpreted by the Council; the reasons for refusal are vague and unsubstantiated by evidence; the Council has not adequately considered the reasons for the failure of alternative available allocated land to come forward for development; the Council's refusal is based on unsubstantiated assertions of unintended consequences rather than identified harm.

The response by Bedford Borough Council

3. The response was made in writing. The following additional points were made orally: The Council asserts that the Wyboston Lakes Economic Needs Assessment December 2023 (ENA) was not available to the Council at the time of its decision; and there was insufficient time for the Council to review the ENA between its submission to the appeal and the hearing event.

Reasons

4. 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.
5. Paragraph 049 of the PPG provides examples of unreasonable behaviour by local planning authorities including, failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate

assertions about a proposal's impact, which are unsupported by any objective analysis. The appellant asserts the Council acted unreasonably as the reasons for refusal are based on vague and generalised assertions and unsubstantiated by evidence as no harm arising from the appeal proposal has been identified and material provided by the appellant has not been contradicted by evidence.

6. The Planning & Heritage Statement August 2022 indicates the proposed development would support and enhance the role of the Wyboston Lakes complex, and thus conform with Policy 73, by increasing demand for its leisure, training, and conferencing facilities. Whilst the Council had insufficient time to review the ENA, the appellant's case was clearly stated at the planning application stage.
7. Pre-application advice was not sought prior to submission of the application. However, this does not obviate the need to produce evidence. The Council does not dispute the development would increase demand for the complex's facilities and has provided no contradictory evidence. Rather, the Council suggests this support is not what was intended by the policy. However, Policy 73 does not define the types of support deemed compliant with the policy. Therefore, the Council's assertions regarding the proposal's impact are inaccurate.
8. The Council suggests the proposal would change the character of the complex, and the development could be used to justify further development of vacant land or redevelopment of existing buildings resulting in the loss of facilities. However, no objective evidence that such harm would arise has been provided.
9. As set out in my appeal decision, the proposed development would be in a suitable location and LP Policy 72S is not engaged. The appellant notes that in this circumstance the second reason for refusal falls away. Whilst both parties presented evidence on this matter, the consideration of alternative land was not necessary in my assessment of the proposed development.
10. The Council failed to produce evidence to substantiate each reason for refusal. Assertions about the proposal's impact are unsupported by objective analysis and are therefore inaccurate. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and an award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bedford Borough Council shall pay to Mr David Barford of Wyboston Lakes Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mr David Barford of Wyboston Lakes Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

E Dade

INSPECTOR