



Costs Decision

Site visit made on 20 February 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2024

Costs application in relation to Appeal Ref: APP/V1505/W/23/3327072 Unit 1A-6A, Bruce Grove, Wickford, Essex, SS11 8BP

- 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 Drainfast for a full award of costs against Basildon Borough Council.
 - The appeal was against the refusal of planning permission for demolition of Units 2A, 3A, 4A, 5A and 6A Bruce Grove and change of use of site at 1A-6A Bruce Grove to E(g)/B2/B8 Use (Business/General Industrial/Storage and Distribution) and layout 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 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. The appellant's claim for costs is based on a number of grounds which I will address in turn.
4. Grounds 'a-c' and 'h-I' relate to the Council's approach to evidence during the course of the planning application and appeal. The appellant submits that the Council has not provided substantive evidence to justify its reason for refusal. However, although the Council's concerns are set out in general terms, I have concluded that they are well-founded and it is the appellant's evidence in respect of noise that I have found to be insufficiently robust.
5. The Council's Environmental Health consultee changed their advice during the course of the application. However, it is not unreasonable for advice from consultees to change or be amended as the consideration of a planning application progresses, subject to those changes being made as a result of valid concerns.
6. The appellant also emphasises that the Planning Chair and Senior Officers intervened to refuse the application. However, it is not unreasonable for Senior Officers or Council Members to intervene in the process leading up to a delegated decision, again subject to there being valid reasons.
7. Given the conclusions in my Appeal Decision, I consider that there are valid reasons to justify the concerns of Council consultees, Officers and Members.

8. The appellant refers to Counsel opinion on the proposal, which contends that the Council's "...preferred hours are not supported by any evidence and appear to simply be a generic approach...". However, as set out in my Appeal Decision, the Council's recommended morning start time reflects that referred to in British Standards in respect of daytime/nighttime. Indeed, it is the appellant's evidence in respect of operating hours which appears to be unsupported and generic, as it refers to the operations of a business which is no longer interested in the site.
9. Although I have allowed the appeal, this is on the basis of the hours of operation which the Council has indicated are suitable. Due to the appellant's stance that longer hours of operation should be permitted, it was not unreasonable for the Council to refuse planning permission based on its concerns in respect of noise.
10. Ground 'd' relates to the Council's lack of engagement in the preparation of a Statement of Common Ground (SoCG). However, the appeal has progressed on the basis of written representations, and there is no requirement for a SoCG to be prepared. The issues raised by the Council's reason for refusal are clear and of a limited scope, and a SoCG would do little to provide further clarity in progressing the appeal. The Council has therefore not behaved unreasonably in not agreeing to the preparation of a SoCG.
11. Ground 'e' relates to the Council's understanding of the evidence, particularly in relation to the purpose of an acoustic barrier proposed by the appellant. However, the issue of this barrier was not material to the consideration of noise affecting the nearby flats, which was the focus of the Council's reason for refusal. Although there may have been some uncertainty within the Council as to the role of the acoustic barrier, this is not of a degree which represents unreasonable behaviour and is not material to the main issue of the appeal.
12. Grounds 'f' & 'g' relate to the Council's consideration of the National Planning Policy Framework (the Framework) and the application of the planning balance. However, the Council has correctly referred to the Framework with regards to noise and the effect on amenity. The Council has also accepted the principle of the development of the site, and has recognised the removal of vacant buildings and the improvement to the appearance of the industrial estate as benefits arising from the proposal. The Council's consideration of the Framework and the benefits of the proposal are therefore appropriate and reasonable.
13. Ground 'j' relates to missing enclosures with the Council's questionnaire. However, this is a minor administrative error which was easily addressed as part of the appeal process and does not amount to unreasonable behaviour of the part of the Council.
14. Drawing the above together, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

David Cross

INSPECTOR