



Costs Decision

Site visit made on 2 April 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th June 2024

Costs application in relation to Appeal Ref: APP/C3430/W/23/3329822 Land at Landywood Enterprise Park, Holly Lane, Great Wyrley WS6 6BD

- 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 Mercia Real Estate for a full award of costs against South Staffordshire District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing building and erection of new building for flexible B2/B8 use, with associated parking and loading areas.
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Decision

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

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. The essence of the applicant's case is that the Council did not accept the comments of its noise and highway advisors and that the Council has acted unreasonably by making vague assertions about the proposal's impact, which is unsupported by any objective analysis.
4. The Council's report to Committee on the planning application recommended that permission should be granted. The report records that Environmental Health Protection had no objections to the proposal, having initially expressed concerns that it would have a significant adverse impact upon the amenity of local residents. The report further records that the Highway Authority also had no objections, subject to the imposition of conditions and the securing of a financial contribution towards the monitoring of a Travel Plan.
5. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
6. Very little information has been put forward by the Council in support of its first reason for refusal relating to noise. It comments that activity within the building and site, and the comings and goings of vehicles including HGVs,

would result in an unacceptable level of noise. However, this is not corroborated by any objective information and seems to me to be little more than an unsupported assertion. Moreover, the Council has offered no compelling evidence to challenge the methodology of the submitted NIA report or to substantiate its concerns about the robustness of its findings.

7. In terms of the second reason for refusal, highway safety was an issue referred to in a significant number of representations from nearby residents and my experience is that local knowledge can often provide an important insight into the realities of a situation. Nonetheless, the Council has not attempted to counter the evidence set out in the appellant's Transport Statement and has not provided any meaningful explanation as to why the proposal could potentially pose a risk to highway safety. Instead, the Council's response is unsubstantiated and broad claims with reference to limited access, existence of parking issues, the unsuitability of the wider road network to take the additional weight of the HGVs and absence of routeing information.
8. I therefore find that the Council has behaved unreasonably as it relied upon vague and generalised assertions about the proposal's impact that are not supported by any technical evidence.
9. In addition, I find that the information before me falls short of demonstrating a conflict with the provisions of the development plan and the National Planning Policy Framework cited in the reasons for refusal. Accordingly, there was no clear reason to deviate from the recommendation within the Committee report. The Council has therefore acted unreasonably by preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

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 South Staffordshire District Council shall pay to Mercia Real Estate, 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.

The applicant is now invited to submit to South Staffordshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elaine Moulton

INSPECTOR