



Costs Decision

Site visit made on 19 April 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2024

Costs application in relation to Appeal Ref: APP/J4525/W/24/3337914 Pennywell Industrial Estate, Sunderland SR4 9EN

- 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 Tim Witty of UK Land Estates for a full award of costs against Sunderland City Council.
 - The appeal was against a grant of planning permission subject to conditions.
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Decision

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

Reasons

2. 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 PPG goes on to advise that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.
4. The first ground for an award of costs cited by the applicant is that the Council has acted unreasonably in imposing a planning condition seeking the approval of matters which have already been settled on the grant of planning permission. This relates specifically to condition No 11, which requires the submission of a drainage scheme, whereas condition No 2 lists a drainage scheme among the approved plans. The applicant notes that the Council seeks changes to the approved drainage scheme through condition No 11 that would result in a substantially different scheme to that already approved under condition No 2.
5. The applicant's second ground for an award of costs alleges that, following the issuing of the planning permission, the Council confirmed verbally that it had incorrectly imposed condition No 11. The applicant claims they were advised to withdraw their appeal and resubmit the approved drainage information to allow for condition No 11 to be discharged.
6. The Council's response to the costs application notes that the planning application was progressed to a swift decision at the request of the applicant. The Council disputes the applicant's claim that it was agreed that condition No

- 11 had been imposed in error. Rather, the Council claims the error lies with the inclusion of drainage plans as part of condition No 2.
7. Due to the lack of substantive evidence, I cannot give weight to either party's allegations regarding any verbal agreements or lack thereof. Nevertheless, the Council's submitted evidence is somewhat contradictory. Its Statement of Case for the appeal does not appear to dispute that drainage details should have been approved under condition No 2, whereas the response to the application for costs states the drainage details should not have formed part of condition No 2.
 8. As set out in my formal appeal decision, I concur with the applicant that condition No 11 did not meet the tests set out in the PPG and the National Planning Policy Framework (the Framework) regarding the imposition of conditions. This is because the details secured under condition No 2 ensured compliance with relevant development plan policy, making condition No 11 neither necessary nor reasonable. The PPG lists the imposition of a condition that does not meet the tests of the PPG and the Framework as an example of unreasonable behaviour on substantive grounds that may lead to an award of costs against a local planning authority.
 9. The submitted evidence indicates that the main parties became aware of the conflict between condition Nos 2 and 11 only after planning permission was granted. The applicant attempted to address this by resubmitting the details secured under condition No 2 to discharge condition No 11, but the Council refused this application. This refusal was a missed opportunity for the Council to correct an unnecessary and unreasonable condition. If the Council had approved these details, the appeal could have been avoided entirely. Unfortunately, the refusal led to an appeal process, resulting in unnecessary and wasted expense for the applicant.

Conclusion

10. I find that unreasonable behaviour by the Council resulting in unnecessary and wasted expense, as described by the PPG, has been demonstrated and that a full 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 Sunderland City Council shall pay to Tim Witty of UK Land Estates, 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 Sunderland City 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.

P Storey

INSPECTOR