



Costs Decision

Hearing held on 31 July 2024

Site visit made on 30 July 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2024

**Costs application in relation to Appeal Ref: APP/P1615/W/24/3338398
Land east of Perrygrove Road and South of Tufthorn Avenue, Perrygrove
Road, Coleford, Gloucestershire GL16 8QB**

- 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 NNA Ltd for a partial award of costs against Forest of Dean District Council.
 - The appeal was against the refusal of planning permission for the delivery of 2 x restaurants with takeaway and drive through, along with the construction of associated infrastructure.
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Decision

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

The submissions for NNA Limited

2. The costs application was made orally at the hearing and concurrently submitted in writing. The Applicant updated the costs application, orally on the day, to adjust the application to seek a partial award only with respect to highway matters.
3. The appeal scheme was followed by a second proposal, which was similar to the refused scheme. This was supported with further information including improved pedestrian linkages and a service and delivery plan. The second scheme was also refused, but the decision notice excluded the two highway reasons found in the first refusal.
4. The Applicant has provided the comments of the Highway Authority, to the second scheme, raising no objection subject to the imposition of five conditions. The Applicant states that this demonstrates that it would have been perfectly reasonable to agree that RfR 3 and 4 had been addressed. The Applicant attempted to establish this matter as a point of agreement, within the Statement of Common Ground, to negate the need for this to be addressed at the Hearing. However, this matter was not agreed.
5. The Applicant states that the Council created undue expense to the Applicant by requiring the appointment of specialist technical representation at appeal and the preparation in advance of the Hearing, with respect to matters of highway safety.

The response by Forest of Dean District Council

6. The response was made orally at the hearing. The Council asserts that:

- It did not know until the day of the Hearing that the Inspector would accept the additional details (being the works to the footway and the servicing and delivery plan) to satisfy RfR 3 and 4.
- The RfR 3 and 4, with respect to the first scheme and the subject of the appeal, were supported by the Highway Authority.
- Although there appeared to be space for an extended footway, this was only hypothetical until this was demonstrated on a plan.

Reasons

7. 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. A Council would be vulnerable to costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Other reasons can include where a Council fails to produce evidence to substantiate each reason for refusal on appeal and where it has refused planning permission on a planning ground capable of being dealt with by conditions.
8. In my main decision I decided that the submitted highway details, showing improved pedestrian linkages, and the servicing plan, would not alter the substance of the originally refused scheme. It was also noted that these details, in forming part of the second scheme, had been subject to the Council's public consultation process and received no objection. As such, to take the additional information into account would not cause procedural unfairness to any party.
9. The second scheme came to important conclusions with respect to highway related matters. These were clearly material to my consideration of the appeal. Being an important material consideration, the Council should have then reconsidered its position. Following the decision it made on the second scheme, it became largely indefensible to maintain the highway objections as stated by RfR 3 and 4. It would have assisted the appeal process, had the Council withdrawn its highway objection to the proposal, as this would have saved time and expense at the Hearing.
10. It is recognised that the Appellant was supported at the Hearing by a transport consultant. This attendance was despite the Highway Authority's Statement of Case explaining that it was actively negotiating with the Appellant to potentially address the highway concerns and hoped that a package of mitigation works would be submitted that could be secured by condition. As a result, it seems that the Highway Authority was becoming comfortable with the proposal and sought a positive outcome.

11. Consequently, the Council's unwillingness to find common ground regarding highway matters, despite the findings of the second refusal and the Highway Authority's comments, demonstrate that the Council was overzealous in maintaining a highway objection in the appeal.
12. Furthermore, the information submitted with respect to the improved pedestrian linkages off-site, could have been sought by planning condition. The Highway Authority reasonably explained that the delivery and servicing plan was required prior to determination as it may have required alterations to the car parking areas. Nonetheless, upon receipt of the new highway information, the Council failed to react to the new position since the second scheme was refused (16/5/24). As such, in maintaining an objection to highway matters the Council has failed to substantiate the continued reasons for RfR 3 and 4 and thus has behaved unreasonably in this regard.

Conclusion

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has occurred in respect of the preparation for, and attendance at, the hearing with respect to RfR 3 and 4. A partial award of costs is therefore warranted, to cover the highway consultancy work undertaken from 16 May to the day of the Hearing.

Costs Order

14. 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 Forest of Dean District Council shall pay to Mr Nicholas, of NNA Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in regard to highway matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Forest of Dean 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.

Ben Plenty

INSPECTOR