



Costs Decision

Site visit made on 12 September 2024

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 15th October 2024

Costs application in relation to Appeal Ref: APP/M0933/W/24/3344817 Land Off Fairthorns Road, New Hutton, Cumbria LA8 0AP

- 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 L and W Wilson (Endmoor) Ltd for a full award of costs against South Lakeland District Council.
 - The appeal was against the refusal of planning permission for temporary change of use of land for material storage, portacabins, welfare units, solar PV panels, and creation of new temporary access (part retrospective).
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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 (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 applicant is seeking a full award of costs on the basis that the Council behaved unreasonably by: failing to act in a positive and proactive manner, not substantiating reasons for refusal on appeal, inaccurate assertions unsupported by objective analysis, refusing planning permission on grounds capable of being dealt with by planning condition, and inconsistency in decision-making.
4. The National Planning Policy Framework advises Councils to approach decisions in a positive and creative way and to work proactively to secure sustainable development. It also encourages pre-application engagement, which has significant potential to improve the planning application system for all parties.
5. The Council did not engage with the applicant during the processing of the application. However, it considers its concerns in relation to the principle of development could not be overcome by further information or minor scheme amendments. While the Council's decision may have been a surprise, the applicant chose not to engage in pre-application discussion and to implement the development in large part before making the planning application. I am not persuaded the Council behaved unreasonably in this regard.
6. The applicant accepts that the Council is not required to consult the non-statutory highway consultee, but considers that in the absence of such the highway reason for refusal is unsubstantiated. The Council did not substantiate its reasons for refusal on appeal, but its officer report sets out its concerns with reference to the nature of the road, the type of traffic and lighting. While the applicant disagrees with the Council, and the Council could have requested

further information to address its concerns if the proposal had been otherwise acceptable, it was not unreasonable of the Council to make its own assessment rather than consult the non-statutory consultee.

7. The lighting that was implemented prior to the application being made was acknowledged to be visible from considerable distances and it was bright to the point of dazzling from Fairthorns Road. While amended lighting proposals were submitted with the appeal to address the Council's concerns, it was not unreasonable of the Council to assess the scheme on the basis that the lighting that had been implemented formed part of the development applied for. On the basis that lighting was not the Council's only concern, the imposition of a planning condition relating to lighting would not have made the development acceptable. The Council would still have refused the application, and the appeal could not have been avoided.
8. With regard to inaccurate assertions, the applicant now accepts that the appeal site is not previously developed land. As noted above, I find there was sufficient evidence that site lighting would result in adverse impacts. While the applicant considers that the Council's strategic approach to the location of development should not apply to temporary development, I am not aware that the policy exempts temporary development on greenfield in the countryside.
9. Planning permission SL/2018/0844 related to a temporary compound associated with the construction of a water main on remote land to the west of the M6. It is similar insofar as it relates to the appeal site and traffic travelled to and from the A684 and junction 37 of the M6. However, there was robust justification for a compound on Fairthorns Road, taking into account the location of the water main and the materially different highway considerations. It is not directly comparable to the appeal scheme, which the Council reasonably determined on its own merits.
10. I understand the Council's decision was a disappointment to the applicant, particularly as the compound has been created and already used for storage, portacabins, welfare facilities and parking. However, as can be seen from my appeal decision, I also found harm and conflict with the development plan and I dismissed the appeal accordingly. It therefore follows that, even if the Council had behaved unreasonably, it did not unreasonably withhold planning permission nor prevent or delay development that should clearly be permitted having regard to its accordance with the development plan and material considerations, including national policy.

Conclusion

11. Therefore, I find that with reference to the PPG, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated. Consequently, an award of costs is not justified in this case and the application is refused.

Sarah Manchester

INSPECTOR