
Costs Decision

Site visit made on 14 August 2024

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Costs application in relation to Appeal Refs: APP/J3720/W/23/3333518 and J3720/X/24/3340845

Fir Tree Farm, Welsh Road, Bascote Heath, Long Itchington, Warwickshire CV47 2DY

- 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 Stratford-on-Avon District Council for a partial award of costs against M Noel Robb.
 - The appeals were against the Council's decisions; 1) not to issue a lawful development certificate for the land's mixed use for agriculture, the keeping of horses and a caravan site involving the stationing of 3 caravans for residential purposes, and 2) to refuse planning permission for the change of use of the land to a mixed use for agriculture, the keeping of horses and a residential caravan site for three gypsy families through the retention of one mobile home and the addition of two mobile homes, together with operational development comprising the erection of a stable building, the laying of hardstanding and construction of new access and driveway.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. This costs application is made by the Council in respect of procedural grounds relating to the scheduled Hearing been cancelled at very short notice due to additional substantive evidence being submitted by the appellant only two days prior to the event. Indeed, the Council says that it received the new evidence only one day before. The application is for a partial award involving only the costs arising from and pursuant to the cancellation.
4. Firstly, I must take responsibility for the postponement. The late evidence submitted by specialist traffic consultants related to the highway safety implications arising from the intention to now create a new access point off Welsh Road, some 25m south-east of the existing access. I had already identified highway safety as a main issue in the s78 appeal given the Council's associated reason for refusal as a consequence of the local highway authority's comments, a consultee, at the application stage.

5. Regarding the Hearing, I was faced with two options given that the Council had not seen the new evidence and would obviously need to be given the opportunity to respond. Accordingly, I could have opened the Hearing and then immediately adjourned to a later date, or postponed it. I chose the latter option and subsequently, following a reassessment of the evidence in its totality, it was decided that a new Hearing date was not necessary as the appeal could instead proceed by way of the Written Representations procedure. The likely difficulties of finding a convenient early date to reschedule the Hearing was also a factor in my decision to change the means of determination.
6. Submissions relating to the appeals trickled in to the Inspectorate during the appeal process contrary to the Appeal Procedure Regulations which require that the Appellant's full Statement of Case be submitted in its entirety at the outset or, in other words, at the time the appeal is lodged. In this case the two appeals at issue were lodged at different times. The s195 appeal was submitted in November 2023 and, following the Council's decision, in January 2024, to refuse planning permission, the s78 appeal was made in March 2024. The significance of this is that in October 2023 planning permission was refused by the Council for the erection of a new stable building, with the reason for refusal based around highway safety implications.
7. Accordingly, on this basis, the appellant would have been aware that this matter was of considerable importance and, when having read the case report relating to the s78 appeal – as mentioned there was a time lapse of some two months between the refusal and the appeal being submitted – it was clear that the local highway authority (Warwickshire County Council) had decided that there was insufficient information and detail accompanying the application to allow for a full assessment to be made on this particular matter. Therefore, the appellant should have commissioned specialist consultants to provide the specified details prior to the appeal being lodged. Moreover, the findings would have informed as to whether a new access point was necessary and why. In the event, the local highway authority, consider that the works now proposed are still lacking in essential detail.
8. The appellant's case in support of the s78 appeal has evolved throughout the appeal process and I do therefore have some sympathy for the Council in the circumstances. Counsel had been instructed to attend the Hearing in order to assist the Council's case. Although I acknowledge that Counsel's involvement is more typical at an Inquiry, this was the Council's choice and was likely due to the number of issues involved.
9. That said, as mentioned, I take responsibility for both the decision to postpone and then revise the means of determination; the former due to the appellant's approach, and the latter in the interests of pragmatism. However, if the appellant had chosen not to submit the late and substantive evidence the situation would not have arisen. Moreover, it is not uncommon for appeals to be determined by means of a Hearing where the Written Representations procedure is equally applicable. Here, the appellant had requested the latter for the s195 appeal and a Hearing for the s78 submission.
10. Accordingly, I must conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has been demonstrated and that a partial award of costs is justified in the circumstances.

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 Mr Noel Robb shall pay to Stratford-on-Avon District Council (the applicant) the costs of the appeal proceedings, limited to those costs incurred in preparing for the scheduled Hearing, including the costs of wasted officers' time, and the Counsel's costs in this particular regard; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mr Noel Robb, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Timothy C King

INSPECTOR