



Costs Decision

Site visit made on 16 July 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Costs application in relation to Appeal Ref: APP/F0114/W/23/3332732 Jat Environmental Reclamation Ltd, Pensford Hill, Pensford, Bristol, Bath and North East Somerset, BS39 4JF

- 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 Mr John Albert Tyler for a full award of costs against Bath and North East Somerset Council.
 - The appeal was against the refusal of permission in principle for the Erection of up to 6 New Build Dwellinghouses (Use Class C3) and Associated Infrastructure at JAT Reclamation.
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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 PPG offers some examples of unreasonable behaviour by local planning authorities (LPAs), which may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. This application has been made on both substantive and procedural grounds.
4. The applicant considers that in determining an application seeking permission in principle, the Council went beyond the requirements for this type of application, including reasons for refusal against matters that should have been considered at technical details consent (TDC) stage. It is also alleged that the Council behaved unreasonably in its failure to adhere to deadlines, in this case the statutory determination period, without agreement of an extension of time.
5. I outlined in my decision that the scope of the considerations for permission in principle is limited to the location, land use and the amount of development. This is clearly highlighted in the Council's Officer Report and Statement.
6. With regard to the Council's third reason for refusal, the Officer Report concluded that the principle of the development was unacceptable in transport terms, as it had not been demonstrated that appropriate pedestrian access to the nearby bus stop could be delivered. The Council drew its conclusions against relevant development plan policies which include tests relating to the location of development.

7. The PPG advises that issues relevant to the 'in principle' matters should be considered at the permission in principle stage. While the acceptability or otherwise of the detailed design of a pedestrian access would fall outside the scope of a permission in principle application, it is nonetheless reasonable that the principal accessibility of the site could be related to its location. This reason was subsequently withdrawn following submission of details to accompany a further application relating to the same site. Nevertheless, for my reasons above and having regard to the PPG, it was not unreasonable for the Council to refuse the application on this basis.
8. Reasons for refusal 4 and 5 both refer to the effect of the proposal on character and appearance, including its response to the local context and effect on local landscape character and local distinctiveness. While my main decision did not find harm in respect of character and appearance, these are essentially matters of planning judgement on which professional planners can reasonably differ.
9. Matters including layout, design, and appearance fall to be considered at TDC stage. However, it was not unreasonable for the Council to consider, as a matter of principle, whether the site's location and the amount of development would be acceptable regarding character and appearance. The Council's approach has been well-reasoned in its evidence.
10. The PPG on decision making states that LPAs should draw on relevant existing information sources and tools to support decisions on whether a grant of permission in principle is appropriate. As such, while reference was made to the submitted illustrative plan, this provides context for the Council's reasoning. The Council based its decision on the evidence before it and I do not find that this amounts to unreasonable behaviour, or that it misapplied the relevant legislation relating to permission in principle applications.
11. Part of the Council's fifth reason for refusal relates to the absence of a Landscape and Visual Impact Assessment (LVIA) to consider the indicative design and location of the development. Article 5D of the Town and Country Planning (Permission in Principle) Order 2017 would not have restricted the applicant from volunteering such information to support the application. Nevertheless, the PPG is also clear that local authorities cannot list the information they require for applications for permission in principle in the same way they can for applications for planning permission. This amounts to unreasonable behaviour on the part of the Council
12. Turning to the procedural matter of timeliness, the Council failed to meet the statutory target determination date, and no extension of time was agreed between the parties. The PPG sets out that if it is clear that the LPA will fail to determine an application within the time limits, it should give the applicant a proper explanation. The Council's costs rebuttal does not clearly explain the reasons for not reaching a decision within the target determination date, nor why it did not request an extension of time. However, it does explain that there was ongoing dialogue between the Council and the applicant, and that it afforded the applicant the opportunity to withdraw the scheme.
13. Such ongoing dialogue indicates that while the Council did not meet its target determination date, it was proactive in its communications with the applicant. The delay of nearly three weeks may have resulted in some frustration on the part of the applicant, but there is little evidence to demonstrate that the Council unreasonably delayed the determination of the application, or that it

was slow or failed altogether to respond to communications from the applicant. As such, there is little substantive evidence that the handling of the application amounted to unreasonable behaviour on the part of the Council.

Conclusion

14. I have found unreasonable behaviour on the part of the Council insofar as it included the absence of an LVIA as part of its fifth reason for refusal. However, the PPG advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
15. Notwithstanding the above part of reason 5, it is self-evident that significant differences of opinion between the parties regarding the planning merits of the case remain, as detailed in the remaining reasons for refusal. Regardless of the inclusion of the requirement for an LVIA in reason 5, these differences would have inevitably led to an appeal.
16. The costs application indicates that the additional costs incurred relate to addressing unnecessary reasons for refusal in the Statement of Case. A very brief part of the Statement of Case relates to the need to provide an LVIA, and no additional technical reports have been submitted by the applicant to support the appeal. I am not therefore satisfied that any unnecessary expense has been caused.
17. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K Jones

INSPECTOR