



Costs Decision

Site visit made on 22 October 2024

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2024

Costs application in relation to Appeal Ref: APP/C1760/W/23/3335590 Land to North East of Manor Farm, Chilworth Old Village SO16 7JP

- 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 Mrs and Mr Sam and Terry Davis for a full award of costs against Test Valley Borough Council.
- The appeal was against the refusal of planning permission for Change of use from arable to equestrian use, erection of stables, hay barn, jump shed, construction of manege and parking, installation of septic tank, and erection of fencing.

Decision

1. The application for a full 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. Paragraph 031 of the PPG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive. Paragraphs 047 and 049 of the PPG sets out some examples of unreasonable behaviour by local planning authorities. The applicant considers that the Council has exhibited unreasonable behaviour on a number of these.
4. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
5. In regard to the first reason for refusal, as I have found in my appeal decision, there is no requirement under Policy COM2 of the Test Valley Borough Revised Local Plan DPD (Local Plan) (adopted 2016) to consider the size and scale of the proposal. Therefore, it was unreasonable for the Council to refuse the appeal proposal on these grounds against this policy. Furthermore, the allegation that the proposal would be for a commercial use is clearly incorrect given the information presented to the Council. This was an inaccurate assertion, and it was unreasonable for them to conclude that it was going to be a commercial use and raise concerns in this regard.
6. However, I consider that there is a degree of ambiguity as to what can be considered as 'essential' for the proposal to be located in the countryside. Therefore, I do not think it was unreasonable for the Council to refuse the

application against Policy COM2 in these circumstances. Consequently, and whilst I recognise that I have found in favour of the applicant on this particular matter, the Council did not prevent or delay development which should clearly be permitted having regard to its accordance with the development plan. Furthermore, whilst I acknowledge that the Council's costs rebuttal provides no further evidence to demonstrate that the proposal was not in accordance with Policy COM2, it is considered that the Council's Statement of Case has sufficiently substantiated the reason for refusal. Therefore, no wasted or unnecessary expense has been incurred by the applicant in the appeal process in particular regard to Policy COM2.

7. In regard to the second reason for refusal, whilst I have ultimately found in favour of the applicant in regard to the character and appearance of the area and the Local Gap, it was reasonable of Council Members to consider matters such as size, scale, siting and visual impact, and their decision on these matters, despite the advice of the Council's Planning Officer and Landscape Officer, is an exercise of judgement.
8. Whilst the Council's Statement of Case does not appear to consider the landscaping proposals put forward by the applicant, the Council did ultimately substantiate their reasoning in regard to the impact of the scale, siting and size of the proposal, linking it through to the impact on the integrity of the Local Gap and the views from the surrounding roads. The decision on these matters is one which is subjective. Whilst I took a different view from the Council on this matter, I am not persuaded that the Council has acted unreasonably in this regard.

Conclusion

9. For the reasons set out above I conclude that, whilst the Council exhibited unreasonable behaviour in some respects in terms of the PPG, I find that no wasted or unnecessary expense has been incurred by the applicant in the appeal process. I conclude therefore, that the application for an award of costs should be refused.

Laura Cuthbert

INSPECTOR