Planning Inspectorate

Costs Decision

Hearing held on 26 November 2024

Site visit made on 26 November 2024

by Elaine Moulton BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2024

Costs application in relation to Appeal Ref: APP/M1900/W/24/3345847
Chas Storer Ltd, Coopers Lane, Northaw, Potters Bar EN6 4NE

- 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 Chas Storer Ltd for a full award of costs against Hertfordshire County Council.
- The appeal was against the refusal of planning permission for the erection of a replacement storage building within an existing paper reclamation and recycling yard.

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 contends, by reference to examples set out at paragraph 047 of the PPG, that the Council behaved unreasonably at the appeal from a procedural point of view. There is, however, no evidence of a lack of co-operation by the Council with other parties, or that it failed to notify the public of the hearing which led to an adjournment. Furthermore, no reason for refusal was withdrawn. As such, I find no unreasonable behaviour by the Council on procedural grounds.

4. The applicant also contends that a substantive award of costs is justified. The examples of unreasonable behaviour that are highlighted are preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

5. I have concluded differently to the Council in my Appeal Decision in respect of the first reason for refusal. Nonetheless, there is a clear local and national policy requirement that all development disposes of surface water in a sustainable manner and that it should be made safe for its lifetime without increasing flood risk elsewhere. In addition, the National Planning Policy Framework indicates specifically requires that sustainable drainage systems

should take account of the advice from the Lead Local Flood Authority (LLFA). Accordingly, the stance taken by the Council, that evidence of infiltration testing was required to demonstrate that the proposed discharge via infiltration was viable, was not unreasonable. Its position was a legitimate exercise of planning judgement. Furthermore, the Council's concerns were clear and understandable.

6. The Council took 36 months to determine the application from its registration date of 28 May 2021, which I acknowledge is a long period. Nonetheless, there is nothing before me to suggest that the timely determination of the application would have enabled the appeal to be avoided and it was open to the applicant to appeal against non-determination.

7. It is apparent that following the preparation of the Flood Risk Assessment and Drainage Strategy and the subsequent submission of the planning application, changes were made to a Source Protection Zone resulting in it extending into the site. It is, however, not clear, based on the evidence before me, when that change took place and, therefore, whether the timely determination of the application would have avoided the issue that resulted in the second reason for refusal.

8. Consequently, the evidence does not persuade me that the Council prevented or delayed development which should clearly have been permitted. Furthermore, I do not consider that the Council did not substantiate its concerns or that its assertions were vague, generalised or inaccurate. While I reached a different conclusion, the Council had reasonable concerns, and I am satisfied that these concerns justified its decision.

9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Elaine Moulton

INSPECTOR