



Costs Decision

Hearing held on 16 October 2024

Site visit made on 16 October 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2025

Costs application in relation to:

Appeal A Ref: APP/K0235/C/24/3342269

Appeal B Ref: APP/K0235/W/24/3340987

Keysoe International Ltd, Church Road, Keysoe, Bedfordshire MK44 2JP

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Keysoe International Ltd for a full award of costs against Bedford Borough Council.
 - The hearing was in connection with appeals against an enforcement notice alleging the construction of 5 raised earth mounds and associated banks and step jumps (Appeal A), and the refusal of planning permission for the retention of an existing equestrian all-weather XC arena, including raised mounds with step jumps and water jumps (Appeal B).
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Decision

1. The application for a full award of costs is refused. However, a partial award of costs against Bedford Borough Council is approved in the terms set out below in the Costs Order.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG)¹ 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 049 of the PPG² advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. I set out below my findings with regard to the various examples of unreasonable behaviour, as claimed by the applicant in this case.
 - i) 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.
4. The applicant contends that the development should have clearly been permitted having regard to the development plan, and in any case the significant benefits arising from the scheme would outweigh any conflict. I did not concur with the Council that there was harm either to the character and appearance of the area or to the living conditions of occupiers of the nearby residential property. As a result, I

¹ Reference ID: 16-030-20140306

² Reference ID: 16-049-20140306

found that the development was in accordance with the development plan. Nevertheless, it seems to me that whether there was any harm to the character and appearance of the area, and in turn whether there was accordance with the development plan, was ultimately a matter of planning judgement. Notwithstanding my findings, I do not consider the Council's position in relation to the effect of the development on the character and appearance of the area to be unreasonable or made without sufficient explanation.

ii) Failure to provide evidence to substantiate each reason for refusal on appeal, and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

5. The applicant is of the view that the Council did not substantiate each reason for refusal. I have already set out above that, although I ultimately did not agree, I do not consider the Council's position in relation to character and appearance harm to be unreasonable, nor was its case based on vague, generalised, or inaccurate assertions on that matter.
 6. However, in relation to harm being caused to the living conditions of occupiers of the nearby residential property Windy Ridge Cottage (WRC), the Council accepted at the hearing that there was currently no such harm being caused by the development. The harm referred to in both appeals instead related to potential future harm should trees along the southern boundary of the site die or be removed.
 7. Whilst the loss of these trees for an extended period would potentially lead to overlooking issues and a loss of privacy for occupiers of WRC, the appellant provided an arboricultural report which demonstrated that the trees were in good condition and had an expected lifespan of 20-40 years. The Council provided no evidence to substantiate any concerns that the trees may die or be intentionally removed, with their case partially based on potential "unexpected events" including the trees being struck by lightning. To summarise, there was little basis to suspect that the trees would be lost in the foreseeable future, and consequently little basis to raise concerns regarding potential harm to the living conditions of occupiers of WRC.
 8. Drawing these considerations together, I find the Council's position with regard to the living conditions of occupiers of WRC to be somewhat confused. In my view the Council failed to substantiate this reason for refusal and made vague and generalised assertions about the developments potential future impact which were unsupported by any objective analysis.
- iii) Refusing planning permission on a planning ground capable of being dealt with by a condition.
9. Even if accepting that the loss of trees in the future would result in overlooking issues and a loss of privacy to occupants of WRC, it is readily apparent that the matter is capable of being dealt with by a planning condition. A planning condition is clearly capable of requiring the retention of the existing trees along the boundary of the appeal site in order to protect the living conditions of the occupants of WRC.
 10. Equally, in the event that trees died or were removed, a planning condition is also capable of requiring the planting of replacement trees of a similar size and species to that which had been lost. The Council did raise concerns that as any

replacement tree could only be planted during the planting season (November to March), it may be several months before the replacement could be planted. I accept that such a chain of events could result in some harm being caused to the living conditions of occupiers of WRC. However, a planning condition is clearly capable of remedying any such harm, which would not be long-lasting.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated having regard to failing to provide evidence to substantiate the reason for refusal relating to the living conditions of occupiers of the nearby residential property, making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, and by refusing planning permission on a planning ground capable of being dealt with by a condition. A partial award of costs is therefore justified on this basis.
12. However, for the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to the other claimed grounds.

Costs Order

13. 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 Bedford Borough Council shall pay to Keysoe International Ltd the costs of the appeal proceedings, **limited to those costs incurred in respect of the Council's enforcement and planning cases regarding living conditions matters only**; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Bedford Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Jones

INSPECTOR