



Costs Decision

Site visit made on 12 November 2024

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Costs application in relation to Appeal Ref: APP/T2405/C/23/3321950

Huncote Mill, Croft Hill Road, Huncote LE9 3GR

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Alastair Brooks for a full award of costs against Blaby District Council.
 - The appeal was against an enforcement notice alleging the material change of use of the land for the research and development of products and processes (Class E(g)(ii) use).
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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) advises¹ 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. Unreasonable behaviour by a Local Planning Authority can either be procedural² – relating to the process, or substantive³ – relating to issues arising from the merits of the appeal.
3. The applicant's case is made on substantive grounds in relation to the ground (a) appeal. In particular, the applicant considers that the Council acted unreasonably by failing to produce evidence to substantiate each reason for refusal, basing its concerns on vague, generalised or inaccurate assertions about the proposal's impact which were unsupported by any objective analysis, and refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The applicant considers that the Council acted unreasonably in respect of each of the four stated reasons for issuing the enforcement notice, which formed the four main issues in respect of the ground (a) appeal. I shall address each reason in turn.

Location

5. The applicant considers that the Council's objections on this issue were not substantiated by any evidence or objective analysis in respect of employment development where no suitable sites within settlement boundaries were available. In addition, the applicant is of the view that the Council failed to acknowledge that Policy DM3 of the Blaby District Local Plan (Delivery) Development Plan Document (adopted February 2019) provides support for alternative sites that are beyond settlement boundaries and on previously developed land.

¹ PPG Paragraph: 030 Reference ID: 16-030-20140306

² PPG Paragraph: 047 Reference ID: 16-047-20140306

³ PPG Paragraph: 049 Reference ID: 16-049-20140306

6. The Council's conclusion that the appeal site was not previously developed land was without sufficient explanation. Although the Council stated that a large part of the business site was previously used as greenspace, it seemingly failed to acknowledge that the site was previously granted planning permission for a shooting school, and that the previous appeal decision⁴ had concluded that the containers and hardstanding which cover the appeal site were lawful. The Council therefore failed to substantiate their claim that the site was not previously developed land.
7. Nevertheless, to accord with Policy DM3 it is also necessary for the proposal to comply with four other criteria and for the site to be located "on the edge" of the built-up area. The Council concluded that, due to the site's separation from Huncote, it could not be considered as being an "on the edge" location. As can be seen from the appeal decision, due to the site's physical and visual separation from the built-up area, I agreed with the Council's position.
8. Consequently, irrespective of the Council's finding that the site was previously developed land, its location meant that there would be conflict with Policy DM3. The Council's position that the location of the appeal site was not suitable and was contrary to the development plan was not unreasonable and did not result in the applicant incurring unnecessary or wasted expense. It is also apparent from the appeal statement that the Council gave weight to the employment benefits arising from the development and considered the advice within chapter 6 of the National Planning Policy Framework in respect of "Supporting a prosperous rural economy".

Character and Appearance

9. The applicant contends that the Council provided no evidence to support its case that the development would have a negative impact on the character and appearance of the area. The Council's concerns in this regard centred on the proposed alterations to the access and visibility splay which were considered to have an urbanising effect and be to the detriment of the character and appearance of the area.
10. Whilst the applicant may not have agreed, the Council were clear that the hedgerow and trees that would be re-located to achieve the necessary visibility splay were an important part of the rural character of the area, and that their re-planting along with the widening of the access would have an urbanising effect. I am therefore satisfied that the Council provided sufficient clarity and reasoning for their position.
11. Although I found there would be no harm to the character and appearance of the area, this does not mean that the Council were unreasonable in reaching their conclusion on this matter, as the judgement about the character and appearance of an area is necessarily a matter of planning judgement.

Highway Safety

12. The applicant's case in relation to this issue is that the Council's concerns were based on vague, generalised and inaccurate assertions that were not supported by any substantive evidence. In particular, the applicant points to the fact that the Council's concerns were not supported by any technical or professional

⁴ APP/T2405/C/22/3294562

assessment and did not provide a copy of the relevant parts of the Leicestershire Highway Design Guidance (LHDG).

13. In response, the Council state that they did consult Leicestershire County Council in respect of highways matters but no response was forthcoming. Furthermore, whilst copies of the LHDG were not provided, the Council argue that the document is readily available online.
14. Although I accept that it may have been beneficial for the Council to have provided more technical information as to the condition of the vehicular access, it remains the case that the appellant's own report⁵ acknowledged that the access and visibility splay did not meet the standards contained within the LHDG. As a result, the report put forward potential improvements to overcome those concerns.
15. The applicant also considers that the Council failed to acknowledge that a planning condition could have been imposed to secure the access improvements and overcome any concerns. As can be seen from the appeal decision, I have imposed such a condition. However, given the Council's position in relation to the impact that the alterations to the visibility splay would have on the character and appearance of the area, it is not surprising that they did not consider that a planning condition was appropriate and would overcome their objections to the development. Although I have found differently in respect of the impact that the alterations would have on the character and appearance of the area, given the accepted need for improvements to be made to the vehicular access, I do not find that the Council's position in relation to this issue to amount to unreasonable behaviour.

Living Conditions

16. Finally, the applicant considers that the Council's reason for issuing the enforcement notice on the basis of its effect on the living conditions of neighbouring occupants was not substantiated by any evidence or objective analysis.
17. It seems that the Council based much of its concerns in relation to this matter on the objections which were received in response to the retrospective planning application⁶ in 2018. That application sought permission for the "*Retention of change of use of land, siting of 4 storage containers and 2 timber buildings and associated parking and landscaping for B1/B8 use*" at the appeal site. The Officer's report for that application states that five letters of objection were received, which included concerns regarding noise and disturbance from vehicle movements and deliveries to and from the site. The report also sets out a clear assessment of the likely impact of the proposal on the living conditions of neighbouring occupants.
18. The appellant accepted that, on occasion, large HGV's visit the appeal site, and that the nature of the business can require a 24-hour response. Although no specific noise data or activity monitoring has been provided by the Council, it is not unreasonable to conclude that large HGV's visiting the site, or the movement of vehicles during unsociable hours when the background noise would be quieter, would result in noise and disturbance for nearby residents. The absence of a formal expediency report does not mean that the Council's conclusion was based upon vague, generalised, or inaccurate assertions.

⁵ Edwards & Edwards Consultancy Ltd, dated July 2023

⁶ Council Ref: 18/0714/FUL

19. Although I have found there would be no significant harm in this regard, this was based upon a matter of judgement. The Council has exercised its own planning judgement in this regard, and so I do not consider the Council was unreasonable in identifying it as a reason for refusal given the information available at the time the notice was issued.

Conclusion

20. Therefore, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not warranted.

David Jones

INSPECTOR