



Costs Decision

Site visit made on 29 October 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th March 2025

Costs Application in relation to Appeal Ref: APP/M1005/W/24/3340781 Denby Hall Business Park – Flamstead House, Hall Road, Denby, Ripley, Derbyshire DE5 8JY

- 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 Liniar Ltd for a full award of costs against Amber Valley Borough Council.
- The appeal was against the refusal of planning permission for a vehicle parking facility.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the 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 has indicated that they are seeking awards of costs on procedural and substantive grounds. However, the evidence put forward in the claim form does not, on my reading, relate to any of the procedural grounds set out as examples in Paragraph 047 of the PPG¹, nor anything else which might sensibly be considered a procedural issue.
4. Paragraph 049 of the PPG² sets out examples of the types of unreasonable behaviour which may give rise to a substantive award of costs against a local planning authority. These include "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", making "vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis", and "not determining similar cases in a consistent manner"; the applicant's claim falls broadly within the scope of these examples.
5. The appeal related to an application for planning permission for a hard-surfaced parking facility, including lighting columns, for cars and HGVs on a site within the Green Belt. As well as this case, I was also appointed to determine two other appeals relating to Denby Hall Business Park³. These other appeals

¹ Reference ID: 16-047-20140306

² Reference ID: 16-049-20140306

³ PINS Refs: APP/M1005/W/24/3340773 and APP/M1005/W/24/3340778

related to a proposed surface water attenuation pond and a number of landscaped bunds on land at the opposite side of the business park, some way from the parking facility in this appeal, and they were the subject of separate Decisions.

6. This appeal related to land adjacent to a warehouse operated by the applicant company, which had been erected following a grant of outline planning permission in 2015⁴ and subsequent reserved matters approvals. The appeal site lies wholly within the boundary of the 2015 permission, and was identified in the indicative layout plan of that permission as an area for staff and visitor parking. However, such a parking area did not ultimately form part of the reserved matters submissions.
7. As a result of business growth and operational development, including the loss of other parking space on its wider site, the applicant company decided in due course that an additional parking area was required, as had been indicatively identified in the 2015 permission. The time limit for further reserved matters in respect of the 2015 permission had passed, and a new planning application – this for the appeal scheme – was necessary. The development had already been carried out, so the application was submitted retrospectively. Planning permission for the development was refused by the Council’s planning committee (its “Planning Board”) against the recommendation of its officers. The single reason given was:

“The proposal does not constitute a form of appropriate development within the green belt since it does not preserve its openness, by virtue of its siting, appearance and scale. No Very Special Circumstances have been demonstrated within the application to outweigh the harm. The proposal is therefore contrary to paragraph 155 of the National Planning Policy, which seeks only to allow ‘appropriate’ development in the Green Belt.”

8. That the Planning Board determined the application against the advice of its officers is not in itself an indication that the Council acted unreasonably; councillors are entitled to disagree with the recommendation put before them. The applicant also noted the wide-ranging discussion at the Planning Board, including concerns over the retrospective nature of the application, the loss of ecological habitat, an increase in traffic and concerns over residential amenity, as well as impact on flood risk. Only some of those points are covered in the Planning Board minutes, but none of them formed the basis of the reason for refusal. That councillors’ discussions covered a broad spectrum of matters is not, in my experience, at all unusual nor, again, is it an indicator of unreasonable behaviour.
9. The 2015 permission had not altered the Green Belt status of the appeal site, and it was common ground between the main parties that the appeal scheme was, in the terms of the National Planning Policy Framework (“the Framework”), inappropriate development in the Green Belt. The acceptability of the development was therefore dependent on whether “very special circumstances” had been clearly demonstrated.
10. The reason for refusal given on the decision notice provided little to no substantive detail, as can be seen above. As reasons for refusal are usually brief, that is not unusual. However, as officers had recommended approval in

⁴ LPA Ref: AVA/2014/0679

this case, the Council's decision was not substantiated by its officer report, which had brought the economic and social benefits of the scheme to the attention of the Planning Board. The Council issued a single statement covering all three Denby Hall Business Park appeals; this concentrated on the pond and bunds appeals, and devoted little more than a couple of sentences, written in very general terms, to the vehicle parking facility in this appeal.

11. The assessment of the weight to be given to other considerations put forward which might amount to those "very special circumstances" is a matter of planning judgement for the decision maker. However, I was not provided with any evidence explaining how the Council had weighed the other considerations which had been put before it in order to reach its conclusion that very special circumstances had not been clearly demonstrated. I therefore consider that the Council's reason for refusing planning permission had been based on vague and generalised assertions, and it was not substantiated during the appeal.
12. The Council's development plan is unchanged since it granted planning permission for the adjacent warehouse in 2015, indicatively identifying the appeal site as a parking area. Although the Framework has been much-altered since then (including in respect of the Green Belt), the considerations most relevant to this case are also fundamentally the same. I therefore find that the Council did not determine similar cases in a consistent manner. Finally, although the appeal scheme was agreed to be "inappropriate development in the Green Belt", the other material considerations in this case are such that in my view the development should clearly have been permitted.
13. Tying all these points together, I find that the Council's actions amounted to unreasonable behaviour. This led directly to unnecessary expense for the applicant in preparing and submitting the appeal. The Council's actions have meant that the appellant has incurred unnecessary expense, and an award of costs is justified.

Conclusions

14. I conclude that behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is therefore justified.

Costs Order

15. 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 Amber Valley Borough Council shall pay to Liniar Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Amber Valley 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.

M Cryan

Inspector