



Costs Decision

Site visit made on 11 February 2025

by **P Terceiro BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 April 2025

Costs application in relation to Appeal Ref: APP/J2210/W/24/3348137

Ileden Farm Barn, Ileden Lane, Kingston, Kent, CT4 6HP

- 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 Jeanette Aurdal (The Oak and Rope Company Ltd) for a full award of costs against Canterbury City Council.
 - The appeal was against the refusal of planning permission for the change of use (current use sui generis) to light industrial use - E(g)(iii) - involving workshop space with ancillary storage, ancillary office and staff wellness area.
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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 PPG sets out that costs cannot be claimed for the period during the determination of the planning application, but all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. It is apparent from the evidence, including correspondence provided, that the Council engaged in pre-decision discussions with the appellant. Although the initial advice provided by the Officer in relation to the outcome of the planning application was positive in tone, this was not the formal decision of the Council.
5. The Council wrote to the appellant advising that the application would be refused. Following this email, the applicant engaged extensively with the Council, aiming to reach a positive outcome for the application. It is apparent that there was some difference of professional opinion between officers and the applicant on the issues raised by the application, however it is not unusual for parties to reach different conclusions.
6. The appeal scheme was refused because the Council did not consider the site to be an appropriate location to accommodate the proposed use, contrary to Policies SP1 and SP4 of the Canterbury District Local Plan 2017 (LP). While it is not good practice that the Council introduced these policies in its decision without previously

discussing them with the applicant, the Council is not obliged to give the applicant a warning of what the application will be refused on.

7. In light of the above, while I understand that the applicant has incurred expenses associated with engaging their planning consultant to correspond with the Council, the PPG clearly sets out that costs cannot be claimed for the period during the determination of the planning application.
8. I note reference to Harlow District Council v Powerrapid Limited [2023]. However, this case relates to a Compulsory Purchase Order, which is a different regime. Still, whilst I accept that the PPG is not statute, for the reasons set out above, I have not found any exceptional circumstances to indicate a different approach to the PPG.
9. As set out in my decision notice, I have found LP Policy SP4 to be relevant in the context of this case, since it sets out the strategic approach to the location of development. It therefore follows that the proposal would also conflict with LP Policy SP1, given that the proposal would not accord with the relevant policies in the LP.
10. The Council did not consider LP Policy EMP14 to be engaged in this case and provided a justification for this stance. Further evidence is provided by the Council on its Statement of Case, where it justifies that the proposal would not comply with criterion a) of LP Policy EMP14 if it was engaged. The weight attached to this is a matter of planning judgement. Further, the Council has had regard to the Framework in reaching its decision and justified why in its view paragraph 88 would not be engaged.
11. The applicant has also referred to caselaw in respect of the application of development plan policies¹ and asserts that the Council did not determine whether the proposal would accord with the development as a whole, not just relevant individual policies. However, there is no substantive evidence before me that other policies might have been more relevant and should have been applied too.
12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense as set out in the PPG has not occurred and an award of costs is not warranted.

P Terceiro

INSPECTOR

¹ R (Corbett) v Cornwall Council [2020] EWCA Civ 508.