



Costs Decision

Site visit made on 4 March 2025

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2025

Costs application in relation to Appeal Ref: APP/P3040/W/24/3352323

Fosseway Service Station, Nottingham Road, Cropwell Bishop, Notts NG12 2JU

- 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 Mr Tom Jeremiah (Welcome Break) for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing two forecourt buildings and erection of one replacement forecourt shop building; new timber compound; new substation with enclosure; installation of jet wash and electric vehicle charging bays with associated forecourt area alterations, parking and other associated external works.
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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 applicant's claim is made on both procedural and substantive grounds.
4. In procedural terms, the applicant states that the Council acted unreasonably by refusing to allow dialogue or additional submissions during the application, and in failing to provide a reasonable explanation of the intended reason for refusal, particularly in light of the planning history of the site where two previous permissions were granted, each for larger developments.
5. On the substantive claim, the applicant states that the Council has failed to provide evidence that the proposal would result in an unacceptable impact on the Green Belt. It is argued that the Council failed to explain its shift in position relative to previous decisions for larger schemes that were determined under the same development plan and broadly the same policy basis.
6. The Council in response states that the applicant chose not to engage in pre-planning discussions as advocated by the Framework, but that it contacted the applicant 30 days before its decision to set out its concerns with the application. The applicant provided updated plans but these were not considered to address concerns over the design of the scheme, notably the placement of the jetwash facilities and the facing materials of the main building. Permission was thereafter refused as it was the Council's view that the applicant was not inclined to amend these elements of the scheme.

7. The Council adds that it considered the planning history of the site in its assessment of whether very special circumstances existed, and in doing so drew distinctions between the proposal and previous schemes in terms of design quality, the policy context changing with respect to the emphasis on good design.
8. Proposals in the Green Belt require various considerations to determine whether development would be inappropriate, whether there would be an effect on openness, whether other harms exist and whether these harms are clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development. Such considerations necessarily involve the exercise of planning judgment. In this case, I agreed with the Council on the question of inappropriateness due to the site not fully meeting the Framework definition of previously developed land. On the question of openness, I found a lesser degree of harm compared to the Council, but this was a matter of judgment on the specific form and layout of the proposal.
9. The Council recognised largely similar benefits arising from the proposal as it did under previous applications. A key difference was its attributing of additional harm to character and appearance in the Green Belt balance, such that the same benefits no longer clearly outweighed the cumulative Green Belt and other harms.
10. I can understand that the applicant had an expectation of a favourable outcome given the prior planning history of the site. However, the proposal was not identical in its design and the Council was entitled to consider it on its own merits. The Council advanced evidence in support of its case and although I found shortcomings in its position and have not agreed with its conclusions on design and the effect on character and appearance, the Council's actions in this respect were not unreasonable.
11. The Council went on to attribute the harm to character and appearance to the negative side of the Green Belt balance alongside harm by reason of inappropriateness and harm to openness, to be weighed against the identified benefits. In these respects, the Council exercised its legitimate planning judgment, and although I have concluded differently, I find that the Council's approach was not unreasonable in the circumstances.
12. I have no documentary evidence of the communications between the parties during the application, and nothing to confirm or refute whether or not the applicant was informed by the Council of its concerns over the design of the proposal and afforded an opportunity to amend the scheme during the application. Ultimately, I have no firm reasons to find the Council acted unreasonably in procedural terms.

Conclusion

13. For the reasons set out, I conclude that that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award of costs is made.

K Savage

INSPECTOR