
Costs Decision

Site visit made on 22 February 2017

by Jane Miles BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 March 2017

Costs application in relation to Appeal Ref: APP/Q4625/W/16/3163356 Storage yard at rear of Rumbush Farm, Rumbush Lane, Earlswood, Solihull B94 5LW

- 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 Martin Furey of Furey Haulage against the decision of Solihull Metropolitan Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for change of use for part of site to HGV parking.
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Decision

1. The application for an award of costs is dismissed.

Reasons

2. The *Planning Practice Guidance* (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. Both this costs application and the Council's rebuttal of it refer to a webcast of the relevant Planning Committee meeting, which is also available to the public via the Council's website. Given the particular nature of this costs application and that both the Council and appellant rely on the content of the webcast, I have had regard to it in addition to the written application and rebuttal.
 4. This application stems primarily from concerns about the Planning Committee's consideration of the planning application. The appellant maintains Members did not have proper regard to development plan and national policy and based their decision on vague, generalised and inaccurate assertions unsupported by objective analysis. He maintains the Committee was unreasonably influenced by local residents' views, many of which were not relevant material planning considerations. Thus, ultimately, refusal of the planning application (contrary to the officers' recommendation) was unreasonable behaviour.
 5. I have borne in mind that local representations at the application stage, both in writing and at the Committee meeting, included many references to matters which are not relevant planning considerations. In particular the appellant's concern about suggestions that his haulage business is operating 'illegally' is understandable: irrespective of whether or not a development is 'lawful' in
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- planning terms, it is not an offence to carry out development without planning permission and, as was acknowledged at the Committee meeting, a retrospective application must be considered on its planning merits.
6. However, (in addition to setting out that the proposal is inappropriate development in the Green Belt and reasons for recommending approval) the officers' written report for the Committee meeting addresses several of the points raised in residents' submissions. Importantly, it is apparent from the webcast that Members were reminded by the Chief Planning Officer during the meeting of points that should not be given any weight in balancing matters for and against the proposal. In short, nothing that I have read, or seen in the webcast, leads me to conclude Members gave undue weight to matters which were not relevant planning considerations.
 7. On the contrary, it is apparent that Members raised and considered a wide range of relevant planning matters before voting on the proposal. These included concerns about the shared nature of the site and other uses of it; the possibility the use might intensify if permission was granted; the possibility of applying conditions to address concerns; the enforceability of a condition limiting HGV numbers¹; the possibility of deferring a decision; whether or not very special circumstances had been demonstrated.
 8. It is apparent that the Chief Planning Officer's summary of points which might be included in a refusal reason included, in addition to the relevant Local Plan policy and the *Framework*, references to the openness of the Green Belt and its purposes, and to character and appearance, none of which had been considered in any great detail in the preceding discussion. The Council's subsequent appeal statement offers little more to substantiate those elements of the refusal reason. That is a shortcoming in the Council's approach, but it is not so significant as to amount to unreasonable behaviour.
 9. However it will be apparent from my decision that I share some of the concerns raised by Members. I have found the submitted information about other uses on the site insufficiently compelling to accept the appellant's case that there is an 'unrestricted' mixed commercial use, and thus a realistic fallback position. I have found other relevant considerations insufficient to amount to the very special circumstances needed to justify the inappropriate development in the Green Belt. I find no reason to doubt that the need to be satisfied that very special circumstances exist was uppermost in Members' minds, and reaching a decision on that key matter will always involve a subjective balancing exercise. Whilst not many Members' spoken views included explicit reference to the considerations involved in that balance exercise, I find no compelling grounds to conclude their decision in this respect was unreasonable.
 10. I therefore conclude the Council's refusal was not unreasonable, such that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated and thus an award of costs is not justified.

Jane Miles

INSPECTOR

¹ Which was also queried by both the Council and appellant when given the opportunity to make written comments on a possible condition restricting to five the number of HGVs parked on the site at any one time