The Planning Inspectorate

Costs Decision

Site visit made on 7 August 2018

by Katie Peerless DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2018

Costs application in relation to Appeal Ref: APP/X2600/W/17/3187973 SPC Atlas Works, Norwich Road, Weston Longville, Norwich, Norfolk NR9 5SL

- 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 Serruys Property Company Limited for a full award of costs against Norfolk County Council.
- The appeal was against the refusal of planning permission for a change of use from B8 to a use for the production of Refuse Derived Fuel.

Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 appellants' application for costs, the Council's response and the appellants' comments on these were all made in writing and I will not, therefore, reproduce them in full here.

4. However, the thrust of the appellants' claim is that Norfolk County Council (NCC) behaved unreasonably by refusing the planning application against the advice of the Council's Planning Services Manage, the Environment Agency (EA), Historic England and the Council's Senior Solicitor. Permission should have been granted in 2017 and the delay has cost the appellants unnecessary expense compounded by having to produce a Habitats Regulations Assessment to address matters arising from a judgement published in 2018.

5. In respect of the reason for refusal relating to the Scheduled Ancient Monument (SAM), the Committee members considered that harm would be caused to its setting, despite Historic England considering that any harm could be mitigated and agreeing that it was a therefore a matter for NCC to determine, and took the decision that the mitigation measures offered by the appellants did not outweigh that harm. The appellants maintain that there is no harm, but NCC has identified some harm, as have I, but NCC concluded that the public benefits of the scheme did not outweigh that harm.

6. Although I have come to a different conclusion, I do not consider that NCC was unreasonable to hold the views that caused it to refuse the application on the grounds of harm to the setting of the SAM and find that it has put forward an arguable case at appeal.

7. Turning to the concerns over site drainage, the application that is the subject of the appeal was first referred to the Planning Committee in October 2016. A decision was deferred until a second meeting in March 2017, and it was subsequently refused in May 2017, despite being recommended for approval by the Planning Services Manager and even though the EA considered the matter could be dealt with through the Environmental Permit (EP) that it would need to issue before the site could operate.

8. Originally, the EA had expressed concerns over the drainage scheme but eventually recommended conditions that should be imposed should planning permission be granted. NCC submits that these, and further concerns expressed by the EA following the second application, justified the members' decision on the first application. It is NCC's contention that that the risks to the hydrological and hydrogeological environment had not be adequately assessed, and it had not been demonstrated that the proposed activities could be undertaken without harming the environment and the River Wensum SAC. In addition, the application did not include detailed proposals of the surface drainage systems that have now been accepted as suitable by the EA. NCC considered the information to be so fundamental that it was not appropriate to rely on conditions to secure this.

9. In the course of the appeal, the appellant has proposed a more detailed drainage strategy which the EA now agrees would be acceptable without the need for further information to be submitted. I have approved the application with a condition requiring this scheme to be implemented.

10. Although the appellants state that it was always the case that conditions could ensure the development would be acceptable, there is a difference between imposing a condition requiring the submission of a scheme for approval showing how the drainage could be satisfactorily dealt with and securing the implementation of a scheme that has already been found suitable, as is the case now. This is a very important issue and I agree that NCC was correct to establish that there was a fully workable scheme identified before granting permission.

11. Therefore, I consider that it was not unreasonable of NCC to take the view that it needed to be satisfied that a scheme for which planning permission was being sought could actually be safely delivered prior to the issue of an EP. Although I have agreed that the scheme has now been shown to be acceptable, this has come about because of information submitted after the date of the appeal and it could not therefore have been taken into account at the time the first application was refused.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Katie Peerless

Inspector