Planning Inspectorate

Costs Decision

Site visit made on 12 December 2024

by R Lawrence BSc (Hons), PGDip (TP), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2025

Costs applications in relation to: Appeal A Ref: APP/Z3825/W/24/3342928 and Appeal B Ref: APP/Z3825/W/24/3347929
Hurston Lane Depot, Hurston Lane, Storrington RH20 4AF

- The applications are made under the applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by Mr Joe Ray for a full award of costs against Horsham District Council.
- The appeals were against the refusal of planning permission for the mixed use of the premises for the Classes B2, B8 and E(g).

Decision

1. The application for an award of costs in relation to Appeal A, is refused.

2. The application for an award of costs in relation to Appeal B, is refused.

Preliminary Matter

3. These applications for the award of costs relate to two linked appeals. Both appeals relate to the same site and differ only in terms of the supporting information originally submitted with the respective planning applications. I have considered each costs application on its individual merits, however, to avoid duplication I have dealt with the two applications together, except where otherwise stated.

Reasons

4. 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.

5. The applicant alleges that the Council has behaved unreasonably on a number of grounds. Those grounds include failing to consider evidence which supported the applicant's baseline water consumption figure, and in doing so has failed to justify its reason for refusal on both appeals, relating to the Arun Valley SAC/SPA/Ramsar sites.

6. The Council's delegated planning officer reports, together with the subsequent appeal statements, set out the planning history for the appeal site, including the 1966 depot application. The analysis also has regard to the use of the site over recent years, water meter readings and other evidence provided within the submitted Water Neutrality Report.

7. Much of these issues resolve around the considerations of the lawful use of the site and whether the present activities benefit from the 1966 permission. There is a dispute between the parties and the Council has made clear its position. The Inspector in the June 2023 decision explained that a s78 appeal, and by implication

a planning application, is not the mechanism to resolve such a dispute. The appellant could have submitted a certificate application after that appeal but chose to pursue planning applications. The Council has maintained its position, and I have as part of my appeal decisions also explained that a s78 appeal is not the mechanism to determine the lawful use of land and buildings.

8. While I make no determination on the merits of its position on the lawful use it is nevertheless open for the Council to maintain its position on the lawful use in the absence of a certificate that proves otherwise. It has then based its position from the starting point that planning permission is required for the proposed use and then following into the analysis and conclusions that it has reached.

9. In relation to the effect on protected sites, it is necessary to demonstrate beyond reasonable scientific doubt, that the scheme would achieve water neutrality, which is a very high bar. Ultimately, I likewise found that there was insufficient information to justify the baseline set out by the applicant, and thus, I was unable to rule out the possibility that the proposal would have an adverse effect on the integrity of the Arun Valley SAC/SPA/Ramsar sites. These findings stem from, in my view, that lack of agreement on the lawful use of the site and therefore the uncertainty when assessing these matters. It follows that I am satisfied that the Council has followed a reasonable approach to assessing these matters and has necessarily been cautious in the absence of a certificate of lawful use and development application. I do not consider this approach has been unreasonable.

10. Furthermore, the applicant contests that the Council was unreasonable in requiring the submission of a transport statement to enable assessment of the potential impact on highway safety. However, in the absence of clarity over the past and present uses, and the baseline to consider any scheme against, the proposed uses have the potential to generate significant amounts of movement. In these circumstances paragraph 118 of the National Planning Policy Framework advises that the application should be supported by a transport statement or assessment.

11. The Council confirmed, within its statement of case for Appeal A, that following the receipt of the additional highway safety information, its concerns in relation to highway safety and parking, had been addressed. The Council did so in a timely manner to minimise costs in the appeal process. Given the policy requirement for a Transport Statement, I do not agree that this was unreasonable or that the Council's reason for refusal was unjustified.

12. The costs claim states that the Council initially sought to amend the description of development, in relation to Appeal B, to reflect a retrospective form of development, without the agreement of the applicant. Whilst there remains a disagreement as to whether the existing uses are on site are lawful, the description of development on the Council's decision notice reflects the wording on the submitted planning application forms.

13. The applicant contends that this caused a delay to the validation of the planning application for appeal B, resulting in a need for appeal A. Whilst I recognise this may have been an influential factor in the decision to submit Appeal A, as a matter of procedure, in assessing the application for costs, this appears to be a matter between the applicant and the Council and not directly part of the appeal process itself.

14. Having regard to the various points put forward by the applicant, within the two respective applications for costs, I do not consider that unreasonable behaviour on the part of the Council has been demonstrated. It follows that there has been no unnecessary or wasted expense during the appeal process.

Conclusion

15. In relation to Appeals A and B, I therefore find that unreasonable behaviour resulting in unnecessary or waste expense, as described in Planning Practice Guidance, has not been demonstrated.

R Lawrence

INSPECTOR