The Planning Inspectorate

Appeal Decision

Site visit made on 11 July 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2023

Appeal Ref: APP/V0728/W/23/3314720
MKM Building Supplies, Limerick Road, Dormanstown, Redcar TS10 5JU

- The appeal is made under section 78 of the Town Country Planning Act 1990 against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission following the failure of the applicant to submit further information, plans, drawings or other evidence required by a direction made by the local planning authority under section 62 of the Town and Country Planning Act 1990 and Regulation 4 of the Town and Country Planning (Applications) Regulations 1988.
- The appeal is made by Mr Ian Harriman against Redcar and Cleveland Borough Council.
- The application Ref R/2022/0914/FFM is dated 14 November 2022.
- The development proposed is Change of Use from Building Supplies Depot (Sui Generis) to Self-Storage Facility (Sui Generis).
- The information alleged by the Council to be necessary is the payment of a fee of £8316 and the submission of a Statement of Community Involvement.

Decision

1. The appeal is allowed and planning permission is granted for the Change of Use from Building Supplies Depot (Sui Generis) to Self-Storage Facility (Sui Generis) at MKM Building Supplies, Limerick Road, Dormanstown, Redcar TS10 5JU in accordance with the terms of the application, Ref R/2022/0914/FFM, dated 14 November 2022, subject to the following conditions:

   1) The development shall not be begun later than the expiration of 3 years from the date of this permission.

   2) The development hereby permitted shall be carried out in accordance with the following approved plans:

      Proposed Site Plan (AO1 PO1)

      Proposed Unit 1 & 2 Internal Layout (AO2 PO1)

      Container Types and Sizes (AO4 PO1).

Applications for costs

2. An application for costs was made by Mr Ian Harriman against Redcar and Cleveland Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council did not validate the planning application because they consider that the fee paid by the appellant of £462, which relates to the proposed development being for a change of use of the land only, was not correct. It is the Council's view that the shipping containers which would be brought onto

the site and used for self-storage are buildings, and that the floorspace provided within them should be included in the calculation of the fee. This they say would give a fee of £8316.

4. There was a second reason why the planning application was not validated, relating to the non-submission by the appellant of a Statement of Community Involvement (SCI). However, whether that statement is required under the terms of the Council's local validation list is directly linked to the matter relating to the fee. This is because it would only be a requirement in a scenario where the floorspace of the containers is included and thus the application is classified as being major development.

5. The primary question in establishing the correct fee is whether the containers are buildings. Section 55(1A) of the Town and Country Planning Act 1990 (TCPA) defines building operations as including (a) demolition, (b) rebuilding, (c) structural alterations of or additions to buildings, and (d) other operations normally undertaken by a person carrying on business as a builder.

6. The appellant sets out that the containers would not be fixed to the ground in any way and would merely rest upon it. There would not be any utility services provided to them. It is further stated that the containers would be sited on an area of hardstanding, and I observed at my site visit that the ground within the appeal site is already fully hard surfaced. There would not, therefore, be any apparent need to change the form of the land or to undertake works to prepare it to be able to accommodate the containers, nor would they be physically attached to the land. Individually, each container would be limited in size and could be transported by a vehicle.

7. There is no suggestion that the containers would need to be assembled on the site. Although there would be 98 containers located externally, without a physical attachment to the land and due to the nature of their form and construction, there would be no demolition required to allow for their removal. They could be removed quickly and easily using a crane and lorry. I accept that their purpose is to provide storage space for the proposed business and in that respect they are likely to remain on the appeal site for the duration of the business operation, which could be many years. Nonetheless, as a matter of fact and degree, the placing of the containers on the land would not amount to the erection of permanent structures.

8. For the above reasons and on consideration of Section 55(1A) of the TCPA, I conclude that the containers would be placed on the appeal site to facilitate the change of use of the land from a building supplies depot to a self-storage facility. They would not be buildings and therefore the proposal does not include works that are building operations. Consequently, the fee that is payable is that for a change of use, which is £462. This also means that the proposal is not a major development and therefore there is no requirement to provide a SCI.

9. The planning application was therefore valid as made and the effect of my finding above is that the appeal is one against the non-determination of the application by the Council. Accordingly, I must now proceed to consider the planning merits of the case.

Main Issue

10. The Council advise that if they had determined the application, planning permission would have been refused on the basis of the effect that the proposed development would have on highway safety, with particular reference to parking and to vehicle manoeuvrability.

Reasons

11. The Highway Authority does not raise an objection to the proposed development in principle, and it does not consider that the number of vehicle trips would cause significant impact to the wider highway network. However, concern is raised as to the absence of a swept path to demonstrate manoeuvring for the largest anticipated vehicle and as to the spacing between the containers shown on the submitted plans, which is considered to be inadequate for vehicles.

12. The proposed use would provide self-storage space to members of the public. It is likely therefore that only cars and vans would visit the site. There is ample room shown on the plans for such vehicles to be able to turn and to park. A swept path is not as a result needed. There would be room for vehicles to drive between the containers, although the appellant states that it is not intended that vehicular access would be provided to every container. The space between the containers would provide a route for vehicles to navigate within the site, and the arrangement would mean that such manoeuvring would be contained within the appeal site and would not have any harmful impact on the public highway.

13. For these reasons, I conclude that the proposed development would not have a harmful impact on highway safety. Consequently, it would accord with part p of Policy SD4 of the Redcar and Cleveland Local Plan 2018, where it seeks to provide suitable and safe vehicular access and parking, and with the development plan as a whole.

Other Matters

14. A representation has been made by a local Councillor, which raises an objection on the grounds of visual, noise and lighting impact on the living conditions of the occupiers of nearby dwellings. However, the visual effect of the proposed storage use, and the perceived harm arising from the use of any outdoor lighting, would not have a significant impact on the living conditions of nearby residents, due to the site's distance from nearby dwellings and the intervening vegetation. The appeal site is located on an established industrial estate, and this together with the degree of physical separation means that there would not be a harmful impact on living conditions from noise. In that respect I further note that no objection was made by the Council’s Environmental Protection team.

15. Although the Planning Statement does refer to a micro wine and beer bar, there is no reference elsewhere in the submission to this, there is no reference on the plans submitted to such a use and the description of development seeks permission only for a self-storage facility. It is clear therefore that this does not form part of the proposed use that has been put forward for consideration.

Conditions

16. Conditions relating to the time period to commence development and to the approved plans are required to provide certainty.

17. The Council suggests that conditions are imposed with respect to surface water drainage. However, the Lead Local Flood Authority advise in their consultation response that the existing site is currently all hardstanding and the proposal will not affect this surface area of hardstanding or the associated run off from the site. Furthermore, there are no known flooding issues on the site and the proposals to place containers on it will not increase flood risk overall. In that context, the suggested drainage conditions are neither necessary or reasonable and I therefore will not impose them.

Conclusion

18. For the reasons given above, I conclude that the appeal should be allowed.

Graham Wraight

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 11 July 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2023

Costs application in relation to Appeal Ref: APP/V0728/W/23/3314720
MKM Building Supplies, Limerick Road, Dormanstown, Redcar TS10 5JU

- 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 Ian Harriman for a full award of costs against Redcar and Cleveland Borough Council.
- The appeal was against the failure of the local planning authority to give notice within the prescribed period of a decision on an application for planning permission following the failure of the applicant to submit further information, plans, drawings or other evidence required by a direction made by the local planning authority under section 62 of the Town and Country Planning Act 1990 and Regulation 4 of the Town and Country Planning (Applications) Regulations 1988 for the Change of Use from Building Supplies Depot (Sui Generis) to Self-Storage Facility (Sui Generis).

Decision

1. The application for an award of costs is allowed in the terms set out below.

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 considers that the Council behaved unreasonably in refusing to validate the planning application. This was despite the applicant advising of their firm opinion that shipping containers are not buildings, they are not fixed to the ground and merely rest upon it. The Council was wrong to calculate the planning fee on the basis of the combined 'floorspace' and such 'floorspace' was immaterial to the calculation of the planning fee. Reference was made to a similar planning application submitted to another nearby local planning authority where the sum of £462 had been accepted as being the correct fee.

4. In the applicant's view the Council has therefore prevented or delayed development, failed to produce evidence to substantiate their refusal to validate the planning application and given vague, generalised and unsubstantiated reasons why the planning fee should be based upon floorspace and not a change of use. The planning appeal should not have been necessary, and the applicant has been put to unnecessary expense and has been delayed in commencing the operation of the self-storage facility.

5. The Council's rebuttal sets out that they responded to the agent in relation to the matter of the fee and explained the view that the fee should be based on

the floor space being created and to be used and not solely on the change of use of land.

6. However, there is no actual explanation and reasoning as to on what basis the Council came to the conclusion that the higher fee was required. The crux of the matter relates to whether the shipping containers are buildings, and therefore whether the relevant fee category is that which relates to the erection of buildings and should in such an instance include their floorspace. Whilst this is a matter which could be said to necessitate an exercise of planning judgement, whatever the judgement ultimately is it requires reasoning and explanation for the benefit of the other party. In this case, the applicant was made none the wiser as to why the Council was of the view that the containers are buildings, in contrast to their own view and the supporting reasons they gave that they are not.

7. It was incumbent on the Council to be able to explain and substantiate their position rather than make a definitive statement that the higher fee was required without reason. They have not done so either in the correspondence that has been provided with the appeal or in defence of their decision during the appeal process. It would also appear that they did not respond to the formal Article 12 notice that the applicant served upon them under the terms of the Development Management Procedure Order 2015. As a whole, this represents unreasonable behaviour and has meant that the applicant had no option but to follow the appeal process.

8. Furthermore, the only objection that the Council raises to the proposed development is that relating to what are minor highway matters. I have found that there is no further information required in that respect, but even if the Council had maintained their view that further submissions were needed, these could have easily been requested and the matter resolved during the planning application determination process. That the applicant was not able to do this resulting directly from the matter relating to the fee has led to the delaying of a development for which planning permission clearly would, and should, have been granted.

9. In conclusion, the Council declined to validate the planning application without adequately substantiating their position on not doing so and this has led to the delay of a development that should have been permitted. This represents unreasonable behaviour as set out in the PPG and has resulted in the applicant incurring unnecessary and wasted expense in having to submit an appeal. A full award of costs is therefore warranted. I note that the Council makes reference to the scope of a possible costs award in its rebuttal in terms of the two separate stages of the planning application and the appeal. However, the PPG provides guidance on this matter and it is not therefore necessary for me to address this point in my costs decision.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Redcar and Cleveland Borough Council shall pay to Mr Ian Harriman, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to Redcar and Cleveland Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Wraight

INSPECTOR