
Costs Decision

Site visit made on 28 March 2017

by H Porter BA(Hons) PGDip IHBC

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

Decision date: 22 May 2017

**Costs application in relation to Appeal Ref: APP/W1850/W/16/3162093
Losito Stud, A4137 from A40 Junction to Burnthouse Green, Whitchurch
HR9 6EG**

- 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 Herefordshire Council for a full award of costs against Ms Karen Harris.
 - The hearing was in connection with an appeal against the refusal of planning permission for the replacement of a redundant barn with a four bedroom house in a sustainable location at Losito Stud, Whitchurch, HR9 6EG.
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Decision

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

Reasons

2. Herefordshire Council (the applicant) provided a written application for costs prior to the Hearing, to which the appellant responded in writing.
3. 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. Unreasonable behaviour can be either substantive, relating to the merits of the appeal, or procedural, relating to the process. The Planning Practice Guide PPG¹ gives examples of unreasonable behaviour, which include an appellant pursuing a clear “no hope” case, such as development plainly in conflict with the development plan without material considerations to the contrary.
4. At the Hearing, the applicant raised the point that the appellant lodged the appeal before receiving a letter advising there was no way forward, citing a previous Inspector’s costs decision². Under the previous costs application, however, the Inspector considered that the appellant could have reasonably waited for the Council’s decision notice before lodging the appeal. In this case, however, the decision notice was sent out prior to the appeal being lodged some 12 days later. While I agree that it would perhaps have been helpful for both parties if the appellant had waited to receive further planning advice, the fact that the appeal was lodged promptly does not amount to unreasonable behaviour in this instance.

¹ 16-046-20140306 to 16-056-20140306

² APP/W1850/W/15/3128690

5. The extensive planning history at the appeal site has brought up a range of issues and policy considerations, including some under consideration in the appeal that was before me. However, there are also clear differences. In the linked appeals cited by the applicant, the proposals related to development on different portions of the appeal site were submitted in outline, with all matters reserved. The form of the appeal scheme is also different to previous submissions, as is the current position with regards to the Council's under-supply of housing land and interim policy.
6. Notwithstanding that the appeal site is located within open countryside and an Area of Outstanding Natural Beauty, and that it is close to a former land-fill site, provisions are made within the development plan and national policy where appropriate development may be acceptable even under such restrictive circumstances. The degree to which an appeal proposal accords, or fails to accord, with these policies, including paragraph 55, is a matter of judgement. It is evident that the appellant has made a case in support of the proposal, including on the basis of the quality of its design and lack of impact on the surrounding area. The issue of land contamination and stability is also not clear-cut and requires a weighing-up of probability and risk factors. Following consideration of the application on its merits alone, I have concurred with the Council's assessment that planning permission should have been refused. While I found against the appeal, I consider that appeal itself was made in good faith.
7. Notwithstanding the confusion and understandable frustration regarding the reserved matters, it was made clear at the Hearing that the appellant only wished to reserve landscaping for future consideration. It was not unreasonable for the matter of landscaping and the design merits of the proposal to be raised in support of the appeal, even if these had not been specifically raised during the application stage. Moreover, despite being a reserved matter, broad consideration in relation to landscaping also played out in the overall consideration of the merits of the appeal. Any time, and thus expense, the applicant spent on preparing a statement regarding paragraph 55 or landscaping and associated ecology, therefore, cannot have been wasted.
8. I accept that the information provided on the application form for outline planning permission was contradictory, appearing to indicate there were no matters to be reserved for future consideration. A degree of uncertainty continued, and it was not until the Hearing that the appellant confirmed categorically that landscaping was the only reserved matter. There was also continuing uncertainty regarding the proposed curtilage for the appeal scheme, which, in-turn, created continuing confusion relating to the reasonableness of an objection in relation to land contamination. While the Council contends that a Hearing was not necessary, the process did facilitate essential procedural matters to be resolved that were not, despite the Council's efforts, satisfactorily established through written submissions.
9. In light of the above, I do not consider that the entire appeal could have been avoided and in spite of the deficiencies within the appellant's planning application, I consider there was a willingness to attempt to follow the correct appeal process. In light of this, I do not find that the appellant has acted unreasonably in this case. As such, there can be no question that the Council was put to unnecessary or wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

H Porter

INSPECTOR