
Costs Decision

Hearing held on 2 November 2016

Site visit made on 2 November 2016

by Amanda Blicq BSc (Hons) MA CMLI

Decision date: 08 December 2016

Costs application in relation to Appeal Ref: APP/L2630/W/16/3150673 Thatcher's Needle, 33 Park Road, Diss, Norfolk IP22 4AS

- 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 Marston's Estates Ltd for a full award of costs against South Norfolk District Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the erection of 4 no non-food retail units (Use Class A1) comprising total 3948sqm with access from Park Road.
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Decision

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

The submissions for Marston's Estates Ltd

2. The costs application was made orally at the hearing. The appellant stated that the costs application was for a substantive award, on three grounds. These were that the Council had delayed development which should be permitted, had failed to substantiate evidence and had provided no specific evidence in relation to design matters, and had made vague assertions regarding the impact of the development.
3. The appellant also argued that the principle of development met Policy DIS6 of the Local Plan¹ (LP), which is a site allocation policy for the appeal site. In addition, the appellant noted that although the Conservation and Design Officer attended the hearing, no oral submission was made by that officer.

The response by South Norfolk District Council

4. The response was made orally at the hearing. The Council responded that there was no reference to LP Policy DIS6 in the reasons for refusal, that the Council had set out clearly which policies the development failed to meet and why, and that the appellant's witnesses had not provided evidence to rebut the Council's case.

Reasons

5. The national Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has

¹ South Norfolk Local Plan, adoption version October 2015

behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Claims can be procedural, that is relating to process, or substantive, that is relating to the issues arising from the merits of the appeal. In this case, the appellant states that the claim is substantive.

6. The decision notice gives two reasons for refusal. The first sets out the Council's case with respect to the effect of the development on the character and appearance of the locality, and the setting of the Diss Conservation Area (CA). It refers to the SPD² which contains design guidelines for Diss, and relevant policies within both the Core Strategy³ (CS) and the LP, which refer to local distinctiveness and the need for new development to make a positive contribution to the area, and to take account of heritage assets. Although specific paragraphs were not identified, the decision notice also refers to the sections of the National Planning Policy Framework which relate to good design and the historic environment.
7. The first reason for refusal specifically states that the development would not achieve high quality design, and refers to a failure to have regard to the traditional character and form of local buildings. It notes the development's generic design, limited articulation, and excessive and unacceptable scale. The Council's statement further reiterates these points and notes that the development would fail to complement its surrounding as required by the Conservation Area Appraisal⁴. The statement also draws attention to the relationship between the appeal site and Park Field, and the fact that the development would represent a scheme of excessive scale when viewed from the north.
8. Whilst I appreciate that the Council's reasoning for each of these issues is somewhat limited, the decision notice and statement nonetheless identify the key design issues, as well as the relevant policies and guidance. In doing so, they provided sufficient information for me to identify the determinative factors and the relevant policy context. Furthermore, the absence of further oral evidence in support of the Council's case at the hearing, does not invalidate the written evidence contained within the decision notice and statement.
9. I appreciate that the appellant developed the design following advice from the officers. However, the resultant design was unacceptable to the Committee and the Committee is entitled to take a different view. Furthermore, having reviewed the evidence before me and the context of the site, I have concurred with the Committee's view and, as reasoned in my decision, have found that the development failed to meet the tests of the relevant national and local policies with regard to design and the historic environment.
10. The second reason for refusal states that the application has failed to demonstrate that the development would not cause harm to protected trees. I appreciate that the Council's statement notes that the existing trees need not be a barrier to development and that adjustments to the development's layout could negate the arboricultural conflict. I also found that the potential harm to the protected trees was not necessarily sufficient to warrant dismissal of the

² South Norfolk Place-Making Guide, Supplementary Planning Document, September 2012

³ Joint Core Strategy Broadland, Norwich and South Norfolk, adopted March 2011, amendments adopted January 2014

⁴ South Norfolk Council, Diss Conservation Area Character Appraisal and Management Plan, September 2012

appeal. Nonetheless, harm to the protected trees was cited as a reason for refusal and again, the evidence in the Council's statement provided me with sufficient information to identify the areas of concern.

11. With reference to the Statement of Common Ground agreed between the main parties⁵, this states that the officer's report concluded that the development was consistent with the aims and objectives of the National Planning Policy Framework. As I have noted above, the Committee came to a different view in relation to design and the historic environment, and the potential harm to protected trees, as have I. This does not demonstrate unreasonable behaviour on the Council's part.
12. In the light of the above, I disagree with the appellant's argument that the scheme should clearly have been permitted. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not justified.

Amanda Blicq

INSPECTOR

⁵ Signed and dated 12 October 2016