
Costs Decision

Site visit made on 3 January 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 18th January 2017

Costs application in relation to Appeal Ref: APP/G2435/W/16/3155841 71 The Spittal, Castle Donington, Leicestershire DE74 2NQ

- 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 Quod Bonum (FFS) Ltd for a full award of costs against North West Leicestershire District Council.
 - The appeal was against the refusal of planning permission for the erection of 13 dwellings with vehicular access, landscaping and car parking.
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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 can be awarded against a party who has behaved unreasonably and thereby caused the costs applicant to incur unnecessary expense in the appeal process.
3. The applicants' case is substantive in nature. For substantive matters, the PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Importantly, any unnecessary costs identified must relate to the appeal process.
4. The Planning Officer's report to the Council's Planning Committee recommended that the planning application be approved. This appeared to follow extensive pre-application discussions particularly on urban design and landscape integration matters. However, as the applicant concedes, a local planning authority (LPA) is not bound to accept the recommendations of its officers. Where the professional or technical advice within a Planning Officer's report is not followed, the LPA will need to show reasonable planning grounds for taking a decision contrary to its officer's recommendation. The LPA is expected to produce evidence to substantiate each reason for refusal to support its decision in all respects.
5. Both reasons of refusal related to issues of character and appearance and involve a reasonable degree of inter-twining. Dealing with the second reason first, this related to the effect of the design of the dwellings on the character of the area. Whilst the appellant may not agree with the Council and I have not found in favour of the Council, this issue is a matter of judgment. There is no call to say that the Council was unreasonable in its judgment, merely that it

gave the issues different weight. The Council's Minutes and the rebuttal to this application by the Planning Officer explains the rationale adopted by the Local Member, which to me suggests that there was some considerable analysis of her concerns that were echoed by the Planning Committee. In my decision on the appeal, I also noted the elements that comprise the overall significance of local character in terms of the adjacent conservation area. These to my mind were well articulated by Committee. Despite the attention given to landscaping, the applicant acknowledged that the development would gain a degree of prominence in the long distance views to the north, a factor that I agreed with. This was a matter that would have been recognised by the Committee who would have had before it the various submissions, including topographical and landscape information. Thus, in my view, the Council went on to amply explain its objection to the proposal and the harm that it felt would be caused to the character and appearance of the area.

6. Turning now to the first reason for refusal, the Council believed it could rely upon its extant development plan policies that identified the appeal site as one of a relatively few number of sensitive areas in its District that were considered worthy of protection. Although the weight afforded to this policy was debatable, for the timebeing and in accordance with legislation¹, the Local Plan remains the development plan for the area and regard must be paid to its policies in decision-making. I also recognised in my decision on the appeal that the development would clearly result in a significant change to the nature of the appeal site. The description by the Council of the site comprising a "green lung" was an apt one in my view. Clearly when viewed from the north and, from where the development would be particularly noticeable despite the high quality landscaping proposals, the escarpment is an attractive wooded escarpment. However, the merits of the scheme coupled with the advice in the Framework ultimately led me to a different decision. The Council on the other hand attached considerable weight to a local policy that has served a planning purpose for some time and which appears to have been consistently applied.
7. Whilst I have some sympathy with the applicant who produced a considerable amount of high quality information and evidence at the time of the planning application in an effort to overcome the policy stance, this fact in my view demonstrates that the applicant anticipated that this policy would be highly material in the Council's thinking. Indeed, the pre-application advice from the Council officers explained the likelihood of firm objection against development at this location. I do not believe that the Planning Committee can be criticised unduly for the stance that it adopted despite the advice of its Planning Officer.
8. In conclusion, although I can understand the applicant's frustration having produced a worthy scheme with the backing of Council officers, I find that the on the substantive grounds that the Council did not act unreasonably. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated.

Gareth W Thomas

INSPECTOR

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.