

Costs Decision

Site visit made on 28 March 2017

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 19 April 2017

**Costs application in relation to Appeal Ref: APP/E2734/W/17/3166949
Field west of Entourage Plc York House, Wetherby Road, Long Marston,
YO26 7NH**

- 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 Entourage Plc for a full award of costs against Harrogate Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for construction of landscaping bund and attenuation drainage lagoon.
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Decision

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

Reasons

2. The appellant's costs application and the Council's response were submitted in writing.
 3. The *Planning Practice Guidance* (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. Furthermore, although behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded, costs can only be awarded in relation to unnecessary expense at the appeal.
 4. In summary, the appellant argues that the Council has behaved unreasonably by refusing planning permission on a ground which is incapable of being justified. It also considers that the Council has failed to be proactive in removing the lagoon from the matters under consideration at appeal, through agreement of some common ground, despite the reason for refusal not relating to this element. In support of its application the appellant places particular reliance on the following circumstances which the PPG indicates may lead to an award of costs: persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable; not determining similar cases in a consistent manner; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by objective analysis; and, preventing or delaying development
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which should clearly be permitted having regard to its accordance with the Development Plan, National Policy and any other material considerations.

5. Whilst the appellant has drawn attention to 2 previous appeal decisions, as I have indicated in my appeal decision, they involve development elsewhere in the country and are not directly comparable to the proposal before me. The appellant has also referred to 2 cases for which the Council has granted planning permission for development which included bunds. However, I do not know the full circumstances of those cases and, based on the evidence provided, it is not self-evident that the proposed bunds are similar to the appeal scheme, which involves a bund with an engineered appearance, due to its angular profile. I have not been provided with any compelling evidence to show that the Council has either: persisted in objections to the scheme or elements of the scheme which the Secretary of State or an Inspector has previously indicated to be acceptable; or, not determined similar cases in a consistent manner.
6. As regards the assessment of the likely impact of the scheme on the character of the landscape, which forms the basis of the Council's reason for refusal, the report to *Planning Committee-22 November 2016* (RPC) indicates that the planning officer considered that the impact would be acceptable. However, the Council was not bound to accept the recommendation of its planning officer where it had reasonable grounds for not doing so.
7. The Council's reason for refusal indicates that the proposed development would appear as an alien and intrusive feature in the landscape, resulting in a significant adverse impact on local landscape character, contrary to the Development Plan and the Council's landscape character assessment. The Council's appeal statement makes clear that its concerns relate in particular to the proposed bund and not the lagoon. As I have indicated in my appeal decision, I consider that the Council's description of the bund as an engineered and alien feature was appropriate. Furthermore, in support of its assessment regarding the likely impact on the character of the local landscape, the Council has made reference to the scale of the proposed bund and conflict with key characteristics of the landscape character area within which the appeal site is located, area 103 of the *Harrogate District Landscape Character Assessment*.
8. As acknowledged by the appellant, the likely impact of the proposal on the character of the local landscape is a matter of judgement. Although I do not fully share the Council's concerns in relation to this matter, I consider that the evidence presented by the Council provides a reasonable basis for its stance.
9. The RPC acknowledges that the proposal would provide a number of benefits, such as: reduced flood risk; removal of the need to transport excavation material from the approved extension at the York House site further than the appeal site; creation of new wildlife habitat; and, additional screening of the York House site from view. I consider it likely therefore, that the Council had such factors in mind when determining the planning application. The question as to whether benefits of the scheme would outweigh any adverse impacts associated with it so as to indicate that planning permission should be granted is also a matter of judgement. Although the conclusion I have reached in my appeal decision is contrary to the Council's determination that planning

permission should be withheld, I consider that the evidence presented by the Council provides a reasonable basis for its stance.

10. Whilst I have no reason to doubt that drainage and flooding issues were debated at the Planning Committee meeting, prior to the Council's determination, this appears to me to be of little relevance in this case, given that the reason for refusal relates solely to the effect on the character of the local landscape.
11. Irrespective of whether other drainage details may have been approved through the discharge of condition no. 11 attached to planning permission Ref. 14/04775/FULMAJ, in the case before me the appellant has sought planning permission for '*construction of landscaping bund and attenuation drainage lagoon*'. The Council's position is that it would be necessary to modify the details of the proposed drainage lagoon to omit the proposed island, a view supported by its ecologist and accepted by the appellant. Under these circumstances, it was reasonable for the lagoon to remain a matter for consideration as part of the determination of the appeal and legitimate to impose a condition to secure that modification when granting planning permission for development including the '*attenuation drainage lagoon*'.
12. In my judgement, the Council has adequately substantiated its reason for refusal, with reference to the Development Plan. Notwithstanding my decision that, on balance, the appeal should be allowed, in this case the degree to which the benefits of the scheme outweighed the harm and conflicts with the Development Plan was limited. In this context, this was not development of which it could be said that it should clearly be permitted, having regard to its accordance with the Development Plan, National Policy and any other material considerations.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

I Jenkins

INSPECTOR