
Costs Decision

Hearing held on 12 April 2017

Site visit made on 12 April 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 13 June 2017

Costs application in relation to Appeal Ref: APP/F2415/W/16/3155173 Land North of Frolesworth Road, Leire, Leicestershire LE17 5HJ

- 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 R D Assets Limited for a full award of costs against Harborough District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a village shop, accompanying store, yard, car parking and access road.
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Decision

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

The submissions for RD Assets Limited

2. The appellant submits that the Council has acted unreasonably in that it has gone against the advice of its officers without good reason, and has not properly addressed Section 38(6) of the Planning and Compulsory Purchase Act 2004 or the guidance in Paragraph 28 of the National Planning Policy Framework (the Framework). It is also submitted that the Council's reasons for refusal are vague, generalised and inaccurate assertions that are not based on an objective analysis, and that the previous appeal decision relied upon by the Council relates to a substantively different scheme in terms of design scale, location and relationship to the village.

The response by Harborough District Council

3. The Council does not have to accept the advice of its officers. The Council considers that the appeal scheme is identical to an earlier proposal that was refused planning permission and the additional information submitted with the appeal proposal did not overcome its concerns. The appeal proposal is not one that should clearly be permitted and a balanced planning judgement is required. The Council submits that its case is demonstrated by reference to the scale of the proposal, comparison to similar villages, availability of public transport and evidence on how the character and appearance of the countryside would be harmed.

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party
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- applying for costs to incur unnecessary or wasted expense in the appeal process.
5. It is common ground between the parties that there are no grounds for a procedural award of costs, and the costs application is made on substantive grounds.
 6. I have noted the Council officer's recommendation in this case and that the appeal proposal was submitted following discussions with the Council's planning officers. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different conclusion is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal.
 7. The Council has produced evidence which, with reference to the relevant policies in the Harborough Core Strategy sets out why it considers the appeal site is not an appropriate location for a new shop, having regard to the Council's overall spatial strategy. Paragraph 28 of the National Planning Policy Framework (the Framework) is supportive of sustainable new development, however, the Council have argued that the proposed development would not reduce the need to travel and that as such the location is not sustainable. It will be seen from my decision that I have accepted these arguments and that the Council have substantiated their case in this respect.
 8. I am not persuaded by the appellant's argument that the Council have introduced a test of need that is not present within Paragraph 28 of the Framework. The Council's argument is that the scale of the store is greater than that required to meet the needs of Leire alone, and the store is intended to attract additional business from elsewhere, which would result in additional journeys. It is not argued that the need for a shop is required to be demonstrated.
 9. Whilst I have not accepted the Councils arguments in respect of the effect of the development on the landscape, these were supported by evidence which made it clear what those concerns were. It was not unreasonable for the Council to come to the conclusion that it did on this matter.
 10. Although I only have basic information in respect of the previous appeal decision before me in evidence, it is apparent that whilst there were differences between this scheme and the present appeal proposal, there were also similarities in respect of the need for travel. It was therefore not unreasonable for the Council to rely on this decision as part of their case.
 11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

John Dowsett

INSPECTOR