
Costs Decision

Site visit made on 15 May 2017

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 24 July 2017

Costs application in relation to Appeal Ref: APP/J2210/W/16/3166055 Bigbury Orchard, Bigbury Road, Chartham Hatch, Kent CT4 7NE

- 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 Mr and Mrs Nevell for a full award of costs against Canterbury City Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of 6 holiday letting units, a reception building and a store.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary costs in the appeal process. Examples of the type of behaviour which may give rise to an award of costs against a local planning authority are set out in paragraphs 47 and 49 of the PPG.
 3. The applicants applied for an award of costs, in relation to two aspects. Firstly, that no account was taken of the Landscape and Visual Impact Assessment (LVIA) submitted with the application which was carried out by a professional landscape consultant, and that the Council failed to obtain advice from a competent person before arriving at a contrary view to the conclusions in that assessment. Secondly, that the Council failed to take proper account of adopted development plan policies for tourism and farm diversification.
 4. The LVIA carried out by Lloyd Bore was informed by national guidance including *Landscape Character Assessment – Guidance for England and Scotland*, and was undertaken by a qualified landscape architect. The LVIA concluded that there would be a direct, long term, permanent effect on the Area of High Landscape Value but that this would be minor in nature and the visual impact of the proposal would be limited, with the result that it would have a neutral effect on the character and appearance of the area.
 5. The Council referred to the long distance views across the valley possible when standing within the site, but whilst it alleged the development would cause significant harm to the character and appearance of the area, the objection was vague and generalised in nature. For example no details were provided of alternative viewpoints where the development might be visible from beyond those set out in the LVIA.
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6. Therefore, in relation to advice in paragraph 49 of the PPG I consider that the Council has not clearly articulated how the proposal would significantly harm the character and appearance of the area, with reference to any compelling evidence in respect of the landscape and visual effects of the proposal. As such the first reason for refusal has not been substantiated.
7. In relation to consideration of development plan policies, the Council referred to policies for farm diversification and tourism in the officer report and first reason for refusal. It acknowledged the role that the development would play in supporting the local economy but gave greater weight to the significant harm it found would be caused to the character and appearance of the area. For the reasons set out above I consider this alleged harm was overstated, but nevertheless the Council took proper account of policies for farm diversification and tourism.
8. The applicants have applied for a full award of costs. However, the second reason for refusal was withdrawn by the Council only after the submission of additional ecological information at the appeal stage. As the appeal would have occurred anyway a full award of costs is not appropriate, but for the reasons set out above I conclude that the first reason for refusal was not substantiated and the Council demonstrated unreasonable behaviour leading to unnecessary or wasted expense in defending arguments against landscape evidence. Consequently a partial award of costs is justified.

Costs Order

9. In exercise of the powers under Section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers on that behalf, IT IS HEREBY ORDERED that Canterbury City Council shall pay Mr and Mrs Nevell the costs of the appeal proceedings described in the heading of this decision.
10. The applicants are now invited to submit to Canterbury City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Claire Victory

INSPECTOR