
Costs Decision

Hearing Held on 11 July 2017

Site visit made on 11 July 2017

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 23 August 2017

Costs application in relation to Appeal A: refs. APP/J1860/C/16/3164136 & 3167522

Land at Strensham Road, Naunton, Upton-upon-Severn WR8 0QA

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andy Openshaw and Mrs Karen Openshaw for a full award of costs against Malvern Hills District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging the unauthorised change of use of the Land for the stationing and residential occupation of a static caravan, together with the unauthorised provision of hardstanding, and the erection of a structure comprising fixed lighting and a pole.
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Costs application in relation to Appeal Ref: APP/J1860/W/16/3162507 Tweenhill Lodge, Strensham Road, Naunton, Upton-upon-Severn WR8 0QA

- 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 Andy Openshaw and Mrs Karen Openshaw for a full award of costs against Malvern Hills District Council.
 - The hearing was in connection with an appeal against the refusal of an application for planning permission for the siting of a temporary workers dwelling, and erection of two agricultural buildings.
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Decision

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

The submissions for the appellant

2. From the evidence put forward at the Hearing, it is clear that the development accords with National Policy and the local plan policies. As put forward by Mr Willis, the development is agricultural in an agricultural landscape, as described in the Council's Landscape Character Assessment. The scheme forms a wayside dwelling and is a scattered farm within the landscape. All of these are considered important characteristics of the *Settled Farmlands on River Terraces* landscape character.
3. With regard to visual impact, the views would be glimpsed from the national speed limit road. Anything glimpsed by a receptor would be of an agricultural business in an agricultural area. The Council accepted at the hearing that the significant hedgerow between the site and the road would greatly restrict views into the site and consequently result in no visual harm. The photographs

presented do not represent a reasonable view into the site. The Council has produced no meaningful evidence of either landscape or visual harm to support the only remaining reason for refusal. Contrary to advice of the government's Planning Practice Guidance¹ the Council had prevented or delayed development which should clearly have been permitted having regard to its accordance with the development plan, national policy and other material considerations. As a result, costs should be awarded on this basis.

4. Furthermore, the Council had failed to adopt a helpful approach, or promptly review the case following the appeal being lodged, contrary to PPG advice. The timeline for the withdrawal of the first reason for refusal is crucial. The planning application was submitted on 3 June 2016, including the Reading Agricultural Consultant's (RAC) agricultural appraisal report. On 16 September 2016, The Council's consultants - Kernon Countryside Consultants (KCC) reported that the functional and financial tests had not been met. The planning application was then refused on 23 September 2016, and the enforcement notice issued 9 November 2016. RAC provided further information to the Council on 12 May 2017, and on 13 June 2017 the Council withdrew their first reason for refusal.
5. It is plain from the timeline, that had the Council taken a helpful approach to the application, then the first reason for refusal would not have been included in their decision. The additional information requested was not complicated, and amounted to no more than a side of A4 in an e-mail of 12 May 2017.
6. As a result of the Council's unhelpful approach, the appeal was prepared on the basis of both reasons for refusal at additional cost. This could have been avoided. Even if the reason had remained in the decision, it could have been withdrawn much earlier than it was. From the timeline above it simply cannot be maintained by the Council that they have taken a sensible approach to case-management as is required by the guidance.
7. The appellant seeks a full award of costs

The response by the Council

8. The Council do not agree that the development accords with national and development plan policies. In particular the appellant did not address the impact of the proposal on the landscape qualities of the area, or refer to the Landscape Character assessment. The Council maintain the development causes harm to landscape interests by consolidating built development in the area, and the settlement pattern of the area. Furthermore, the development did not conform to the exceptions criteria of set out in Policy SWDP 2, with regard to dwellings for rural workers.
9. It is not accepted that the visual impact of the development from Strensham Road would be minimal, and that there would be no visual harm.
10. The Council make clear that the site is within a distinctive landscape of relatively high quality, of considerable value to most residents. To allow inappropriate development would compromise both general well-being, and the economic viability of the area. This would be contrary to aims set out in the NPPF and the SWDP to promote high quality design and local distinctiveness.

¹ Paragraph 049 of the Planning Practice Guidance section of 'Appeals – Award of Costs'.

It is disputed that it has produced no meaningful evidence of landscape or visual harm.

11. The Council's consultant's advice in the original agricultural appraisal of April 2016 was that there was insufficient evidence to support a need to live on the site, and this formed the basis for refusal of the planning application, and issue of the enforcement notice. Further evidence was submitted in March 2017, highlighting a number of matters on which more information was sought. This was provided in a letter from the appellants of 12 May 2017, and it was confirmed by the Council on 13 June 2017 that the first reason for refusal of the planning application would be withdrawn. As the further evidence was not provided until after the appeal start date it is unarguable that the first reason for refusal should never have been part of the appeal, and the Council does not agree that it should have withdrawn the first refusal reason earlier in the process.
12. The earliest the Council could have withdrawn the first reason for refusal was in April 2017. However even if that is accepted, it is not clear to the Council what further costs, save for the email of 12th May 2017, the appellants actually incurred.
13. It was the view of the planning officer that the issues highlighted in the supplementary report of the Council's consultants were critical to ensuring that the basis of their revised view was sound. This is not unreasonable or unhelpful.
14. On this basis, no award of costs should be made.

Reasons

15. I have determined the application in the context of the government's Planning Practice Guidance. This includes the advice that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
16. Regarding the question of whether the development, and particularly its visual impact, accords with national and development plan policies relating to development in the countryside, it cannot be assumed automatically that development relating to agriculture, and sited within an agricultural landscape should be approved. The development should be assessed against the visual qualities and character of the area. The Council took the Worcestershire Landscape Character Assessment (LCA) as the baseline, and then considered the specific qualities of the appeal site and area around. Although the LCA is not an adopted document, it gives a clear indication of the Council's understanding of the landscape, and how development can be accommodated. Indeed, the appellants accepted the characterisation of the LCA, and argued that their scheme fitted in to this landscape type.
17. The Council came to the view that, given the specifics of the appeal site and nearby existing development, the proposed scheme in the planning case, as well as the development enforced against, consolidated development and caused harm to the actual settlement pattern in the area. I can find no indication of unreasonable behaviour in this approach, and do not consider the

appellants were led to incur unnecessary or wasted expense in making their counter arguments.

18. The Council had received clear advice from their professional consultants – Kernon Countryside Consultants (KCC) in September 2016 that once the alpaca enterprise was established there would be the need for an on-site worker, but that the appellants had not demonstrated their enterprise had been planned on a sound financial basis. This led to the decision to refuse the planning application, and later, to issue the enforcement notice. The appeals against the planning decision and the enforcement notice were then made in October and November 2016 respectively.
19. Appeal statements in both the enforcement case and the planning case were to be submitted by 1 March 2017, with final comments by 22 March 2017. In the event the Council's statements were submitted on 28 February 2017, and following difficulties with transmission of documents the appellants' statements were submitted on 6 April 2017, including the new information from Reading Agricultural Consultants (RAC).
20. The Council had responded to the new information on 3 May 2017, saying that they had revised their position on the first reason for refusal on the planning decision, and recording that they still had concerns about the sales figures, changes from the previous variable costs, and the purchase price of the alpacas. I understand these matters were largely resolved in the e-mail letter from RAC on 12 May 2017, which KCC confirmed on 7 June 2017.
21. Given the dates for submission of Hearing statements it appears to me inevitable that both sides would have needed to prepare their statements, and defend their positions on the basis of the original appraisals made by RAC in April 2016, and KCC in September 2016. While the appellants were not able to submit their Hearing statement until 6 April 2017, this was for reasons quite other than the submission of new evidence, and in any case the Council had not realistically had the opportunity to review their position on the first reason for refusal by that time.
22. There was no information before the Council until March 2017 that indicated the financial soundness of the enterprise might be properly established. I do not consider it unreasonable that the Council then took further advice from KCC, or that gave rise to the queries that were eventually resolved by 7 June 2017, and the first reason for refusal withdrawn on 13 June 2017. Following that date the appellants would have incurred virtually no costs in bringing their case to the Hearing.
23. Overall, I do not consider the Council behaved unreasonably, or caused the appellants to incur unnecessary expense with respect to their defence of the second reason for refusal in their planning decision and the sixth reason for issuing the enforcement notice, both of which relate to impact on the open countryside. Furthermore, I do not consider they behaved unreasonably or caused the appellant to incur unnecessary or wasted expense in continuing to defend their first reason for refusal of the planning application and the fifth reason for issuing the enforcement notice.

Conclusions

24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated, and intend to refuse the application.

Stephen Brown

INSPECTOR