



Costs Decision

Inquiry Opened on 26 June 2018

Site visits made on 25 and 26 June and 12 July 2018

by Ken Barton BSc(Hons) DipArch DipArb RIBA FCI Arb

an Inspector appointed by the Secretary of State

Decision date: 24 December 2018

Costs application in relation to Appeal Ref: APP/Q3115/W/17/3187058 Land south of Greenwood Avenue, Chinnor, Oxfordshire OX39 4HN (nearest)

- The application is made under the *Town and Country Planning Act 1990*, sections 78, 320 and Schedule 6, and the *Local Government Act 1972*, section 250(5).
 - The application is made by Persimmon Homes for a partial award of costs against South Oxfordshire District Council.
 - The inquiry was in connection with an appeal against the refusal of an outline application for planning permission for the construction of up to 140 dwellings, new public open space, associated landscaping and site infrastructure.
-

Decision

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

The submissions for Persimmon Homes

2. Persimmon's written application for a partial award of costs was made before the close of the Inquiry. The first component of the sole remaining reason for refusal is an objection to the impact of the development on landscape character and/or its visual impact on the landscape. At the Planning Committee, Members rejected the Case Officer's recommendation to grant planning permission on the basis that they "did not agree that the impact on the landscape setting or character of the local area would be acceptable. However, the reason for refusal has not been substantiated.
3. The Council did not call any expert evidence in support of this aspect of its case, despite having an expert landscape witness at the Inquiry.¹ This expert had previously advised the Council that there were no landscape or visual grounds for ruling the site out as a candidate for residential development. Instead, the Council's planning witness maintained in cross examination that she could express judgements on landscape and visual impact from a 'planners perspective'. This is wholly inadequate and inconsistent with the landscape witness's expert advice. The council has made assertions unsupported by any objective analysis. Judgements need to be properly considered, which means an appraisal undertaken by a suitably qualified landscape expert applying the Landscape Institute's Guidelines for Landscape and Visual Assessment 3rd edition (GLVIA3). The only such evidence is that of Persimmon's landscape expert whose analysis must be accepted.

¹ Costs Application, CD2.2a page6

The response by South Oxfordshire District Council

4. The Council's verbal response is based on paragraphs 181 to 185 of its closing submissions. Its planning witness confirmed at the outset that her evidence was not only based on her extensive planning experience but that she had, in a number of appeals, applied her expertise in assessing the impact of developments in landscape and visual terms becoming familiar with all three editions of GLIVIA that had been current during her time in practice.
5. In this case she had made judgements based on much of the landscape assessment work produced in relation to the Landscape and Visual Impact Assessment (LVIA) relied on by the appellant at application stage, and used relevant material to form her own judgements. Whether the development would result in an unacceptable loss of an area that separates developments is a judgement well within her experience and expertise in the light of the landscape assessment and site visits in and around the proposed developments.
6. Indeed, when properly considered, many of the LVIA findings indicate a harmful proposal with some of the appellant's assessments based on erroneous assumptions. The Council's evidence was clear, robust and provided cogent and suitably expert evidence to support the position in the reason for refusal.

Reasons

7. The Planning Practice Guidance (PPG) advises that costs may 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.²
8. PPG paragraph 049 sets out a non-exhaustive list of examples where a local planning authority's behaviour might give rise to a substantive award of costs against it. I consider that bullet points 2, failure to produce evidence to substantiate each reason for refusal, and 3, vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, are the most relevant in this case.
9. Members disagreed with the view expressed by the Council's Officers, which in itself is not unreasonable. It is for each party to decide how to present its case. There is no requirement to use an expert of any particular type or level of expertise, although this might affect the weight given to such evidence. An experienced planning witness would be perfectly capable of reaching a view on the impact of a proposal considering evidence provided by others and reaching a conclusion. Indeed, it is not particularly unusual for experts dealing with the same topic to reach differing views based on the same proposals.
10. In this case the Council's landscape evidence was predominantly based on the landscape assessment work produced in relation to the Landscape and Visual Impact Assessment (LVIA) and relied on by the appellant at application stage, and the judgement of the Council's planning witness. Whether the development would result in an unacceptable loss of an area that separates developments is a judgement well within her experience and expertise in the light of the landscape assessment and site visits in and around the proposed

² PPG Para 029

developments. Consequently, the reason for refusal was supported by objective analysis.

11. Regardless of whether some of the appellant's assessments were based on erroneous assumptions, the Council's evidence was clear, robust and provided cogent and suitably expert evidence to support the position in the reason for refusal
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in this case.

Ken Barton

INSPECTOR