
Costs Decision

Site visit made on 25 June 2019

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2019

Costs application in relation to Appeal Ref: APP/X2410/W/19/3226343 Land at rear of No 43 Westfield Drive, Loughborough

- 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 Swithland Homes Limited for a full award of costs against Charnwood Borough Council.
 - The appeal was against the refusal of planning permission for the erection of four dwellings including access and parking arrangements.
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Decision

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

Reasons

2. 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.
3. The appellant's claim for costs, in part, considers that the Council has acted unreasonably in a substantive manner by failing to produce evidence to substantiate each reason for refusal; vague assertions about a proposal's impact; and not determining similar cases in a consistent manner. The claim is also made on procedural grounds asserting that the Council has introduced fresh and substantial evidence regarding the ecological value of the appeal site at a late stage.
4. The reasons for refusal themselves are relevant to the planning application and explain on what grounds the Council considered the proposal not to be acceptable. The Council's appeal statement also sets out its concerns in detail and how it considers these arise with a satisfactory level of explanation. A purpose of such a statement is to amplify the matters which are set out in the reasons for refusal and this is satisfactorily achieved. Furthermore, it also responds to points that are raised in the appellant's appeal statement.
5. In relation to the form of development, it is apparent that the valued landscape features that the Council are concerned with relate to the verdant character of the site. This is an aspect of the character and appearance of the area which is of considerable importance for assessing the effects of the proposal. It does not solely rely on some form of designation for its consideration. Whilst the National Planning Policy Framework refers to protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner

commensurate with their statutory status or identified quality in the development plan), it also states that decisions should ensure developments are sympathetic to local character.

6. The Council's Environmental Health Officer did not raise objections on noise and disturbance grounds and, as I have set out in my decision, I agree with the appellant on this issue. Nevertheless, assessing noise in planning terms is not only a technical exercise. The Council consider that the proposed shared driveway arrangement would introduce general disturbance where the occupiers of what would be the neighbouring properties benefit from a current tranquil environment. Its contentions on this matter are not made without evidence.
7. This is simply a matter where there is a disagreement between the appellant and the Council on certain elements of the form of the development. This does not amount to the Council failing to produce evidence to substantiate this reason for refusal, or vague assertions about a proposal's impact. The same applies as regards the main parties differing views on tranquillity.
8. In relation to the loss of allotment land, I disagree with the appellant that either the state of the site or inactivity is synonymous with it ceasing to be allotments, notwithstanding that it appears still to be currently part used for this purpose, or that it is surplus to requirements. The Council also place more reliance on more recent open space studies than its 2011 assessment document, which is not an unreasonable position.
9. Nor has the Council determined a similar case in an inconsistent manner in this regard. The development on land to the rear of 23 Westfield Drive provided monies towards qualitative improvements to other allotments sites. No such offering has been made in this case.
10. In relation to the procedural grounds for the claim, this is also unfounded. The Council simply provided ecological evidence as part of its appeal statement, concerning the related reason for refusal. It is not inconsistent with that reason and it was also provided in accordance with the appeal timescales. A lack of the identification of the site in an up to date Council audit does not mean it does not have ecological value and, indeed, the appellant has offered ecological mitigation.
11. Whilst the appellant considers that the Council's ecological evidence goes well beyond what was submitted with the questionnaire, a function of the Council's appeal statement is to support the reasons for opposing the development, including that it must contain all available evidence. The appellant has taken the opportunity to respond to the Council's statement through providing Final Comments, as per the appeal procedures. There has been no disadvantage on this matter. The internal correspondence between the Officers of the Council which the appellant has referred me to does not change my views.
12. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR