



Costs Decision

Hearing Held on 14 August 2019

Site visit made on 14 August 2019

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2019

Costs application in relation to Appeal Ref: APP/C1625/W/18/3213459 Chambers Farm, Naas Lane, Brookthorpe, Gloucester GL4 0XA

- 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 C Ratcliffe for a full award of costs against Stroud District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a development originally described as: Change of use of land for leisure uses and the formation of ancillary facilities including fishing lakes, a camping ground and a pet cemetery.
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Decision

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

Reasons

2. The PPG¹ 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 applicant seeks a substantive award of costs against the Council for reasons which were set out in advance of the Hearing in a written submission that the Council responded to verbally at the Hearing.
4. The applicant considers the Council wrongly applied Policy EI10 of the Local Plan in respect of tourist development. The applicant considers this policy is aimed at built-form development such as hotels and theme parks. On this point I accept the Council's response that the applicant's perception in this regard is due to the drafting of the policy, which I heard was intended to apply to all forms of development and not just 'buildings' as is suggested by the wording of some parts of the policy. Moreover, I note the applicant identified Policy EI10 as 'applicable' in their submission documents so I do not accept the Council was wrong to apply Policy EI10 to the appeal scheme.
5. However, the applicant also considers the Council failed to take into account the fundamental principle that fishing lakes can only be located where there is a readily available supply of running fresh water. This point was clearly made to the Council on more than one occasion in correspondence before the application was decided and I have not seen evidence that satisfies me this important material consideration was taken into account by the Council and

¹ Planning Practice Guidance: Appeals

- balanced with development plan policies and sustainability concerns before the Council made its decision.
6. The applicant considers the Council failed to balance its concerns with the advantages of the scheme in terms of environmental benefits for landscape and ecology. But as was discussed at the Hearing, the effect of the scheme is neutral in these respects and so I do not accept the Council failed in this regard.
 7. The Council have alleged that the business would not be viable and in this case the applicant considers this should not be a material planning consideration for the Council. Whilst I accept there may be circumstances where the viability of a proposal may be an important factor, I am not satisfied that the planning policies relied on in this case contain an explicit requirement for the applicant to have demonstrated the viability of this particular development. Moreover, given the very specific nature of the development, I do not see that the Council appreciated that the effects of the development failing would be likely to be limited i.e. the lakes would likely revert to wilderness.
 8. The applicant considers the Council failed to engage with the applicant and refused to make a site visit to the applicant's existing lakes at Harescombe. I visited these lakes during my site visit as well as the appeal site itself. Doing so gave me a better understanding of the likely effects of the fishing lakes on the living conditions of nearby residents and my observations during my visits supported comments made at the Hearing that fishing is a quiet activity. So whilst I see the Council was in regular contact with the applicant before making its decision, I am not satisfied the Council acted in a way that meant it fully understood the likely effects of the proposal.
 9. At the appeal site visit I could not see the nearest dwellings to the appeal site which the Council confirmed were in Brookthorpe. Whilst I have no evidence the Council did not visit the appeal site as part of their assessment of the scheme, or that the Council was swayed by objectors to the development, I am not satisfied the Council properly considered the context of the appeal site, particularly the distance between the appeal site and the nearest dwellings and the intervening landscape features that would mitigate noise and disturbance from the development.
 10. Had the Council accepted the applicant's invitation to visit a comparable development at Harescombe, the likely effects of the proposal may have been better understood by the Council and its decision may have been different with the third reason for refusal not included on the decision notice.
 11. The applicant considers the Council did not consider granting permission subject to conditions in relation to camping. But I accept, as was discussed at the Hearing, given the very specific nature of this proposal there could be real practical difficulties in enforcing such conditions.
 12. The applicant considers the Council ignored advice in the recently revised National Planning Policy Framework regarding leisure uses and the rural economy. However, this advice was acknowledged in the Council's report and so I am satisfied it was not ignored.
 13. Whilst I have not found in favour of the applicant on all grounds claimed, fundamentally I am not satisfied the Council properly understood the locational

constraints of the proposed development or its likely effects. I have considered awarding partial costs on the basis of reasons for refusal 1 and 3. But as stated by the Council, the second reason for refusal is similarly linked to the first and both reasons identify the same development plan policies. So considering all of the above factors, reason for refusal 2 cannot be divorced from reason for refusal 1.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

15. 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 in that behalf, IT IS HEREBY ORDERED that Stroud District Council shall pay to Mr C Ratcliffe, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Stroud District 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.

L Perkins

INSPECTOR