

Costs Decision

Inquiry held 23–26 and 30 July 2019

Accompanied site visit made on 31 July 2019

by Helen Heward BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2019

Costs application in relation to Appeal Reference

APP/P1560/W/18/3201067

Land off Grange Road, Lawford, CO11 2JB

- 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 Mr Gladman (Gladman Developments Ltd) for a partial award of costs against Tendring District Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to *110 dwellings with public open space, landscaping and sustainable drainage system (SuDs) and vehicular access point from Grange Road.*
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Decision

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

Reasons

2. The Appellant's cost application and the Council's response were submitted in writing shortly before the final adjournment of the Inquiry. The appellant's reply was submitted in writing after the adjournment, in accordance with an agreed timetable.
3. The Planning Practice Guidance ('PPG') on Appeals 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.
4. The claim for a partial award of costs relates to landscape. A Landscape and Visual Impact Assessment (LVIA) accompanied the application. The Planning Officer's delegated report found the LVIA to provide a genuine and accurate description of the landscape and visual effects. The LVIA found that some of these were adverse.
5. At page 17 the Planning Officer's report includes the following analysis *"the recommended change to the indicative layout to reduce the impact on the SAM (to remove the northern most area containing 11 dwellings) would also ensure that built development on the site does not extend further north than the southern boundary line of the neighbouring recreational ground. The housing would then be less prominent in views from the south and west while any proposed landscaping matures"*.
6. When read as a whole, the Planning Officer's conclusion that *"the landscape harm from the proposed development would not be so significant as to justify refusing planning permission on these grounds alone"* cannot be divorced from the Planning Officer's stated understanding that an informative attached to a

- grant of consent would achieve the recommended change to the indicative layout to make the scheme acceptable. It was plain that without this change the Planning Officer found that unacceptable harm would arise.
7. Policy EN1 (EN1) seeks to protect and, where possible, enhance the quality of the district's landscape and its distinctive local character. Any development that would significantly harm landscape character or quality will not be permitted. Characteristics, which it seeks to conserve, include plateau edges, the settings and character of settlements, and the traditional character of protected lanes, other rural lanes, bridleways and footpaths.
 8. Tending District Local Plan Paragraph 6.7 explains that Policy EN1 is particularly concerned with the role of settlement and built development in the landscape. It focuses upon maintaining and enhancing landscape quality and local distinctiveness. EN1 primarily applies to development proposals in the countryside and on the edge of settlements, but any development that could visually detract from key settlement characteristics of its surroundings would be considered contrary to EN1. It also explains that it is a policy approach based on landscape character assessment enabling informed judgements to be made on what is and what is not appropriate development within a particular local landscape.
 9. On the basis of the Planning Officer's report I do not find it a surprise to see EN1 in the reason for refusal. A Decision Notice should state clearly and precisely the reasons for the refusal. The conflict with the Development Plan and EN1 is clearly stated. The fact that the landscape or visual harm is not particularised is a shortcoming. However, in reading EN1 and the accompanying explanatory text, together with the Planning Officer's report I do not see that a reasonable person would have been unclear about the harm that the Council had found and the conflict with EN1.
 10. The Council's original Statement of Case, October 2018, did not articulate their position in respect of EN1 but paragraph 2.47 did address the environmental objective of sustainable development in the National Planning Policy Framework. In doing so it states that development would appear as 'urban sprawl' adversely encroaching into the countryside and harming the appearance of the rural locality, completely alter and change the semi-rural character of the locality and that development is not considered sustainable. The Council's failure to address EN1 was a shortcoming but paragraph 2.47 alerted the Appellant to the Council's intention to address effects upon the character and appearance of the rural locality and countryside.
 11. Unrelated to this issue, the appeal procedure was changed. The Hearing did not take place and an Inquiry was scheduled for July 2019. At the end of November 2018 the Planning Inspectorate issued a timetable for the Inquiry requiring submission of the Statement of Common Ground by 29 May 2019, and submission of Proofs of Evidence by 25 June 2019.
 12. On the 27 February 2019 the Council advised the Appellant by email that they would be calling specific evidence relating to the EN1 conflict identified in RfR1. The Council's updated Statement of Case April 2019 provided further details at paragraphs 33-37. They provided some helpful clarity, but I do not accept that it amounted to *"introducing a new reason for refusal" or "fresh and substantial new evidence at a late stage"*.

13. The Appellant had more than adequate time to address the landscape issue after the 27 February 2019. The Appellant had already produced the LVIA for the application and there is no evidence to suggest that the time of notice prevented them from undertaking any necessary additional work for the Inquiry. I am not persuaded that a failure to initiate contact in relation to the landscape issue prior to then is equivalent to a "*lack of co-operation with the other party or parties*" as cited by the PPG.
14. Once proofs were exchanged the Appellant had more time to understand the Council's concerns, and opportunity to agree common ground before the event. By the time the Inquiry opened I found that the landscape witnesses for the main parties were in broad agreement about the extent of the Zone of Visual Influence and key viewpoints. The differences between the parties largely amounted to different judgements about the scale of effects that would arise and effects of mitigation.
15. The fact that the Council found the Appellant's LVIA to be genuine and accurate was not to say that the Planning Officer found the predicted effects acceptable, or that it was not credible for the Council to pursue this issue. The Planning Officer's report is reasonably clear that they conclude that despite mitigation there would be harm to the landscape and visual amenity of the area, the character and qualities of the landscape, local landscape character, and that adverse landscape impacts would be contrary to the Development Plan.
16. The LVIA might have been uncontroversial but that did not mean that the Council was unreasonable in seeking to defend why it found the harm and consequent conflict with Policy EN1 unacceptable, and that why, in combination with conflict with spatial Policy QL1 the Council found the conflict to justify a refusal.
17. There is nothing to suggest that any earlier or greater contact would have obviated the need for evidence on this issue or that the proceedings could have been any shorter. The Appellant relied on the original LVIA at the Inquiry, there was no significant new evidence produced. There was no necessity to adjourn or delay the inquiry in relation to landscape issues.

Conclusion

18. There were some shortcomings in the articulation of landscape harm Rfr1 and a lack of reference to Policy ENV1 in the original statement of case. But I have not found evidence that this, or any other action of the Council amounted to unreasonable behaviour that caused the applicant to incur unnecessary or wasted expense in the appeal process. The application is refused.

Helen Heward

INSPECTOR