
Costs Decisions

Hearing Held on 13 August 2019

Site visits made on 12 and 13 August 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2019

Costs application 1 in relation to Appeal Ref: APP/K2420/18/3218401 Kyngs Golf and Country Club, Station Road, Market Bosworth CV13 0NP

- 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 Statue Homes Limited for a full award of costs against Hinckley & Bosworth Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of a multi-functional recreational building, formation of new car parking areas, new access roads and the proposed erection of 15 golf holiday homes and all associated ancillary works and landscaping.
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Costs application 2 in relation to Appeal Ref: APP/K2420/19/3229633 Kyngs Golf and Country Club, Station Road, Market Bosworth CV13 0NP

- 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 Statue Homes Limited for a full award of costs against Hinckley & Bosworth Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for Change of use of vacant outbuilding to No. 1 holiday lodge and alterations to existing vehicular access onto Station Road to include the extension of the access drive.
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Decisions

1. Costs Application 1 is partially allowed, in the terms set out below.
2. Costs Application 2 is partially allowed, in the terms set out below.

Procedural Matters

3. The applicant submitted applications for costs in writing in respect of both appeals at the outset of the Hearing. The Council's response, and the applicant's final comments in respect of both costs applications were made orally at the Hearing.
4. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on

appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The PPG states that the circumstances when the behaviour of a local planning authority might lead to an award of costs can either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

Application 1

The submissions for Statue Homes Limited

6. The application is made on a substantive basis. The applicant argues that the Council's description of the site as '*isolated and remote from services and facilities*' lacks credibility and has not been objectively assessed. It fails to recognise that the site adjoins the settlement boundary of Market Bosworth and is the closest tourism facility to the settlement.
7. Further, that the Council's stance that the appeal proposals are 'excessive' in scale is a vague and inaccurate assertion. The applicant points to significant alterations made to the design during the application at the Council's request which reduced the scale of the proposal, and to the evidence demonstrating the size of the clubhouse being smaller than at nearby courses. The applicant argues that no benchmarking or objective assessment has been evidenced by the Council to substantiate its conclusions.
8. The applicant also submits that the Council sought to significantly undermine the economic benefits of the proposal, in the face of evidence of the potential level of employment generated by the proposal, the identified need for holiday accommodation and the importance of the sale of the nine holiday lodges to the overall viability of the proposal.
9. The Council failed to take into account the applicant's updated Landscape and Visual Impact Assessment (LVIA) and wrongly stated that the LVIA was not prepared in line with national policy, which is unreasonable behaviour.
10. In respect of the third reason for refusal (RFR), the Council failed to acknowledge that the existing golf course is unviable, that no functioning course exists, that the proposal would reinstate an 18 hole golf course, or that Sport England supported the overall proposal. The Council has not produced evidence to demonstrate that the loss of the 9 hole course would affect the viability of the enterprise. The Council's position that the proposals will result in less choice for members is illogical and unreasonable.
11. The Council has produced no evidence to substantiate the three reasons for refusal and relied on vague, generalised and inaccurate assertions about the proposal's impact which are unsupported by objective analysis and thereby prevented development occurring which should clearly have been permitted. The Council has therefore acted unreasonably and put the applicant to unnecessary costs in making the appeal.
12. At the Hearing, the applicant added that the Council failed to approach the decision in a positive and creative way, as set out in Paragraph 38 of the Framework¹, by seeking to find problems, not solutions. Moreover, the Council failed to properly analyse the costs appraisal submitted prior to the Planning Committee, with only brief reference in the Late Items note.

¹ National Planning Policy Framework, February 2019

13. The applicant criticised the appearance of Dr Hickey for the Council on landscape matters, saying no advance notice had been given of his appearance, that he offered no new evidence nor were his views supported by LVIA evidence. It was unreasonable to bring Dr Hickey in at this stage. Had the appellant known, his landscape consultant could have liaised with Dr Hickey beforehand to reduce areas of disagreement and so shorten the Hearing discussion.

The response by Hinckley and Bosworth Borough Council

14. On the matters raised orally by the applicant, the Council defended its use of a consultant (Dr Hickey) on the day of the Hearing. The event was not an Inquiry, and no proofs of evidence were required. The Council's original landscape consultant was unable to attend the Hearing and Dr Hickey was put forward in their place. It was not unreasonable to do so.
15. In respect of the approach taken to the decision, the Council states that it adopts a positive and proactive approach to proposals. The appellant was offered the chance to use the Council's pre-application advice service, but declined. A site visit by Council's representative in 2017, where they were given a tour by the applicant, but no plans or scheme were discussed, did not amount to a formal pre-application discussion.
16. The Council's decision was informed by consultee comments in reaching a judgement on the merits of the proposal. In this instance, there were no conditions which could overcome the Council's concerns. The appellant's costs claim refers to a previous planning application which is of no relevance to the present appeal.
17. With reference to the third RFR, the last use of the site was as a golf course, therefore it is the starting point for decision making. Whilst the previous business owner failed, no evidence has been submitted to demonstrate that a new business would not be viable. The applicant stresses that demand for golf is on the increase. The Council's aim is to ensure the golf course, being outdoor sport, can be brought back into use and facilities provided are not reduced or diminished, per the requirements of Policy DM24.
18. The RFRs set out why the proposal is harmful and what the policy conflict is. The committee report, statement of case and evidence at the Hearing has provided the justification for the reasons for refusal.
19. The Council has refused planning permission because it considers the development to be contrary to the development plan and no material considerations exist which indicate planning permission should be granted. Therefore, the refusal of planning permission is reasonable and justified.

Reasons

20. The submissions relating to the Late Items note and whether or not pre-planning advice was given relate to events prior to the appeal itself. I have no evidence to suggest that these events led to unreasonable behaviour by the Council at appeal.
21. In relation to Dr Hickey's appearance, it is not uncommon for particular individuals to be unable to attend the Hearing. As far as I am aware, neither side provided an attendance list before the Hearing, and whilst prior notification

- may have shortened proceedings, there is no guarantee this would have happened. As such, I do not find the Council's lack of notification unreasonable. Moreover, given that the applicant had already planned to bring a landscape expert to the Hearing, Dr Hickey's presence on the day did not disadvantage the applicant as it had someone readily available to counter Dr Hickey's points.
22. The Council's first RFR essentially related to the principle of locating the proposal facilities outside of the settlement boundary, along with their scale. Given the support for the proposals under policies DM4 and 23 was conditional upon their effect on the character of the landscape, it was not unreasonable for the Council to consider whether the location and scale of the proposals was acceptable. Therefore, I do not regard the Council's stance at appeal as unreasonable in this respect.
23. In respect of the second reason for refusal, the areas of disagreement related to matters of landscape impact. Ultimately, these are matters of judgement. I accept that the evidence of applicant's LVIA and the submissions of its landscape expert were based on nationally recognised guidance for assessing impacts on landscape character. Even so, those conclusions still require a degree of subjective judgement, and the Council was able to substantiate its position through its statement of case and the submissions at the Hearing. As such, I do not find the Council has exhibited unreasonable behaviour in defending this reason for refusal.
24. In respect of the third RFR, the Council's position was framed in such a way as to imply there would be a loss of facilities to an existing enterprise. That was not an accurate reflection of the situation, as no playable golf course exists, and it follows that there could be no threat to its viability. Whilst Policy DM24 seeks to resist the loss or change of use of cultural and tourism facilities including ancillary areas, there is an important difference between the loss of an existing facility and a proposal not re-providing a facility which no longer exists. The Council should have understood this distinction, and no evidence was provided to substantiate its position that a 9 hole practice course was necessary for the future viability of the golf club, or how the re-positioning of the 1st and 18th holes would undermine the functioning of the course, when there would still be a full 18 hole facility.
25. As such, the Council's assertions that the proposal would result in less choice for members were based on vague, generalised and inaccurate assertions about the proposal's impact which are unsupported by objective analysis. This amounts to unreasonable behaviour as set out by the PPG, and the applicant has been put to wasted expense in contesting this reason for refusal.

Conclusion on Application 1

26. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the third reason for refusal, is justified.

Application 2

The submissions for Statue Homes Limited

27. The applicant submits that the Council, in taking the position that the proposal would harm the viability and functioning of the golf course, failed to recognise no such facility exists, and applied Policy DM8 erroneously.

28. The Council failed to recognise the existence of the track leading to the appeal building despite evidence showing it in situ in 2008 or that one was needed for a vehicle to empty the septic tank by the building.
29. The Council has produced no evidence to substantiate its three reasons for refusal, failed to have regard to its development plan, failed to justify how the purported benefits of a currently closed golf course is a material improvement over the appeal proposal.

The response by Hinckley and Bosworth Borough Council

30. The Council reiterated reasons set out in respect of Costs Application 1, in that its decision was informed by consultee comments in reaching a judgement on the merits of the proposal, and that there were no conditions which could overcome the Council's concerns.
31. In addition, as the last use of the site was as a golf course, it is the starting point for decision making. Whilst the previous business owner failed, no evidence has been submitted to demonstrate that a new business would not be viable. The applicant stresses that demand for golf is on the increase. The Council's aim is to ensure the golf course, being outdoor sport, can be brought back into use and facilities provided are not reduced or diminished, per the requirements of Policy DM8. The Policy does not require the use to be active.
32. The Council conceded that the building was not in fact remote as alleged in the second RFR, and the wording of the RFR was 'sloppy' in that it did not accurately reflect the concerns set out in the original officer's report. Officers added that the Hearing discussion established how the building was to be used and managed. With hindsight, the second and third RFRs should have formed one reason for refusal. Whilst the Council conceded that the second RFR, by itself, was not defensible, it did not wish to withdraw it.

Reasons

33. In respect of the first RFR, it was erroneous of the Council to frame the reason for refusal around harm to the '*viability and functioning of the existing golf course*', when it was common ground that no functioning golf course exists. However, the Council was entitled to consider whether the change of the building to a holiday unit would affect the functioning of the wider golf course, the re-opening of which was proposed as part of the concurrent appeal. This formed the first main issue of the appeal. Although my decision shows I have not agreed with the Council's position, I do not consider the Council acted unreasonably in considering the proposal against Policy DM8.
34. Turning to the second reason for refusal, the Council concedes it was poorly crafted and inaccurate in its wording. However, this was not revealed until the Hearing itself, and therefore this amounts to unreasonable behaviour which led the applicant to the wasted expense of contesting this reason for refusal.
35. The third reason for refusal relates to matters of judgement in relation to character and appearance. Though I have not agreed with the Council in my decision, it was able to substantiate its position at appeal, where it not unreasonably indicated it would not oppose the proposal on character and appearance grounds when it emerged that the appellant was not necessarily proposing to undertake operational development in respect of a track.

Conclusion on Application 2

36. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the second reason for refusal, is justified.

Costs Order

37. 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 Hinckley & Bosworth Borough Council shall pay to Statue Homes Limited the costs of the appeal proceedings described in the headings of these decisions, limited to those costs incurred in contesting the Council's third reason for refusal in respect of the appeal to which Costs Application 1 relates, and the Council's second reason for refusal in respect of the appeal to which Costs Application 2 relates, such costs to be assessed in the Senior Courts Costs Office if not agreed.
38. The applicant is now invited to submit to the 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.

K. Savage

INSPECTOR