



Costs Decision

Site visit made on 28 October 2019

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Costs application in relation to Appeal Ref: APP/E2734/W/19/3235262 Manor House, Lower Dunsforth Village Street, Lower Dunsforth YO26 9RZ

- 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 Carl Dyson for a full award of costs against Harrogate Borough Council.
 - The appeal was against the refusal of planning permission for the construction of two residential dwellings with associated access and parking (all matters reserved except access).
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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 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.
4. The applicant submits that the Council has acted unreasonably in that reference has been made, within both the officer's report and decision notice to the presence of ridge and furrow and the site constituting an infill site, both of which have been disputed by the applicant. Moreover, the applicant submits that the Council has acted unreasonably by failing to substantiate the reasons for refusal in respect of the sequential test, the sustainability of the settlement and the weight given to planning policies and the Council's housing land supply figures. Finally, the applicant also contends that the Council has acted unreasonably in its advice regarding the sustainability of the settlement and in requesting additional archaeology work which, the applicant argues, was unnecessary if the Council were minded to refuse the application. The Council has defended itself in relation to all the allegations presented.
5. It is common ground between the parties that the appeal site contains earthworks. However, the applicant's archaeological evidence provides an interpretation of these earthworks that differs from the Council's. The Council have maintained their position although have provided little in the way of

substantive evidence to demonstrate the presence of ridge and furrow.

Although I have been minded to agree with the applicant's evidence regarding the interpretation of the earthworks on site, the debate regarding the interpretation, does not fundamentally alter the value of the earthworks as a non-designated heritage asset.

6. Even if I were to conclude that the Council acted unreasonably in maintaining its position regarding its interpretation of the earthworks, this has not resulted in additional expense during the appeal process. The archaeological work was completed reasonably for the application to be determined and it seems to me that, in reality, there has been so little extra work involved in responding on the matter of earthworks that it can be regarded as 'de minimis'. In effect the applicant has quickly and easily rebutted the Council's position referring me to the archaeological work undertaken during the application, without wasting expenditure in the appeal.
7. I recognise that the Council's position that the appeal site does not represent an infill site, is questionable, given the appeal site's position within the village. However, it is clear reading the Council's reason for refusal as a whole that the concern does not rest on whether it constitutes an infill site or not. I agree with the Council that the reason for refusal would have been clearer with the word 'unacceptable' inserted prior to the word 'infill'.
8. It is not unreasonable for the Council to make an assessment on the site's character, as this exercises a certain amount of subjective judgement. The reason for refusal then seeks to balance that harm with any benefits of the scheme. As such, I do not agree that the Council acted unreasonably in refusing the application on this basis. I confirm in this regard that I have made my own assessment as to the character and appearance of the area and the effects of the proposals on this matter, having regard to its position within the village.
9. With regards to the weight to be given to the Council's emerging policies, its housing land supply and the sustainability of the village, these all require a degree of subjective judgement. The apportionment of weight is a matter for the decision maker and in my view, the Council did seek to substantiate their position on all these aspects and provided evidence from the Local Plan Inspector regarding the stage of the emerging plan and the status of the settlement. Whilst I recognise that the applicant has provided counter evidence in support of the appeal, I consider that the Council did seek to substantiate its position and therefore did not act unreasonably.
10. With regards to the sequential test, the Council's Officer report clearly states why they consider the sequential test to have failed, citing a specific site which had outline consent but had not yet been implemented. It will be seen from my appeal decision, that I consider the sequential test to have been passed. However, such a conclusion arises from a matter of judgement relating to the availability of other sites. The Council's position was that as there is another site that is sequentially preferable which has not been completed, and maybe available, then the appeal fails the sequential test. Irrespective of the outcome of the appeal, the Council did seek to substantiate its position. Therefore, I cannot find that the Council behaved unreasonably relative to this issue in offering a different view to my own.

11. During the application, and from the evidence provided, it did appear that the Council gave inconsistent advice regarding the sustainability of the settlement. I recognise that this was in the context of changes in the Council's housing land supply position, an appeal decision and the status of the emerging plan. Moreover, I note that the Council's initial pre application advice did suggest that the settlement was not considered particularly sustainable, but an application was still lodged notwithstanding. I have no substantive evidence before me to conclude that any change in the Council's position on this matter during the application led to any wasted costs during the appeal. I confirm in this regard that I have made my own assessment as to the sustainability of the settlement and the weight to be given to this matter.
12. I recognise that the Council's requests for a heritage statement and archaeological work and the delay in requesting a wider search area for the sequential test, may have been frustrating for the applicant. Although I have no substantive evidence to indicate why the request for the wider search area for the sequential test was made 8 months after submission, all the requests for further information were, in themselves, reasonable to enable the application to be fully assessed.
13. Whilst I recognise that this added costs to the applicant during the application, the absence of this work would have resulted in insufficient information and additional reasons for refusal. These matters would need to have been addressed for any appeal. Consequently, whilst the Council's delay in requesting a broader sequential test was unreasonable behaviour, the actual request, and other requests for additional work, were not. Moreover, there is no substantive evidence before me that they caused wasted expense in the appeal process.

Conclusion

14. I conclude that, on the basis of the evidence before me, it has been demonstrated that the Council behaved unreasonably with respect to a procedural matter during the application. However, in the particular circumstances of this case, I am not satisfied that the unreasonable behaviour caused unnecessary or wasted expense for the applicant in the appeal process in so far as an award of costs could be justified.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Robert Walker

INSPECTOR