



Costs Decision

Hearing held on 17 December 2019

Site visit made on 17 December 2019

by Michael Boniface, MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2019

Costs application in relation to Appeal Ref: APP/F2415/W/19/3228050 Land off West Langton Road, Langton Hall, West Langton

- 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 & Mrs Moore for a partial award of costs against Harborough District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a "new low energy dwelling and landscape proposals submitted under paragraph 55 of the National Planning Policy Framework".
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Decision

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

The submissions for Mr & Mrs Moore

2. The costs application was made orally at the hearing, seeking a partial award confined to the costs involved in preparing the Rebuttal Statement.
3. This arises from the Council's introduction of matters at the appeal stage that were not previously raised, namely the concept of the site falling within a 'valued landscape'. In addition, having concluded that paragraph 79 of the National Planning Policy Framework (the Framework) was not applicable to the appeal proposal, the Council failed to address the similar criteria relating to outstanding or innovative designs at paragraph 131 of the Framework. There was also no consideration given to policy GD4 of the, at that time emerging, Harborough District Local Plan 2011-2013 (LP).
4. This was unreasonable because it introduced fresh and substantial evidence during the appeal which required further work to address the points by the appellant¹. Furthermore, the Council's stance on the issues raised was unclear, involving vague and generalised assertions².
5. The officer report made no reference to paragraph 131 of the Framework or policy GD4 of the LP, a material consideration. There were no discussions after the refusal of permission and no particulars as to why points could not be agreed. The first time any detail was given was in the Council's appeal submissions.

¹ PPG Reference ID: 16-047-20140306

² PPG Reference ID: 16-049-20140306

The response by Harborough District Council

6. The response was made orally at the hearing.
7. Appellants should generally be expected to meet their own costs in pursuing an appeal. The Council determined the application in accordance with the development plan at that time, a perfectly reasonable approach. Weight was attached to the comments of the OPUN design panel, but nowhere did they state that the proposal was outstanding or innovative. The application was submitted as a 'paragraph 55' proposal and this was addressed by the Council. The appellant referred to paragraph 131 late in the day. The matter of 'valued landscapes' was part of the character and appearance argument made by the Council and needed to be discussed as a main issue to the appeal. It was fully addressed during the appeal, including at the hearing. Discussions were held with the appellant after permission has been refused and the Council's position was made very clear.

Reasons

8. The Planning Practice Guidance 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.
9. The Council made reference to paragraph 170 of the Framework at an early stage, albeit that it did not identify the site as a 'valued landscape'. The Council's reference came out of its preparatory work for the hearing as part of a wider issue raised in respect to character and appearance. The appellant was required to address this main issue in any case.
10. The indication that the Council considered the site to fall within a 'valued landscape' did not come until the appeal stage but there was ample time and opportunity for the appellant to address the matter, particularly when represented by a professional landscape architect. The Council's reference to a 'valued landscape' did not necessitate the Rebuttal Statement, much of which is dedicated to supporting the appellant's case on heritage and the schemes sustainability credentials. The appellant's agent could have readily dealt with the matter at the hearing without the need for further detailed evidence.
11. The Council's case was adequately defended at the hearing and an explanation was given to support its position. As such, I find nothing unreasonable in this respect.
12. In relation to other matters, it is not at all surprising that paragraph 131 was not mentioned in the Council's officer report or decision given that the latest version of the Framework had not been published at this point. In any case, the Council's case has clearly and consistently been that the development was not outstanding or innovative and therefore paragraph 131 would not have applied regardless. In such circumstances, there is no reason why the Council should have been expected to refer to it.
13. Finally, the Council determined the planning application in accordance with the development plan at that time, as it is required to do. Whilst emerging policy GD4 may have attracted some weight as a material consideration, it was not necessary for the Council to rely upon the emerging policy in refusing planning permission when it had an equivalent adopted policy dealing with development

in the countryside in policy CS17 of the Harborough Core Strategy, which would plainly attract greater weight.

14. Overall, it seems to me that the Council fairly and actively engaged with the appeals process and adequately substantiated its case. I find nothing unreasonable in its conduct.
15. In light of the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.
16. The application for a partial award of costs is refused.

Michael Boniface

INSPECTOR