



Costs Decision

Hearing Held on 24 September 2019

Site visit made on 24 September 2019

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 January 2020

Costs application in relation to Appeal Ref: APP/G0908/W/18/3218594 land at Low Road, Low Road, Cockermouth

- 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 Opus Land North (Cockermouth) Limited for full and partial awards of costs against Allerdale Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of non-food retail unit (Class A1) with external garden centre, employment unit (Class B1, B2, B8), access, customer car parking, landscaping and associated works.
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Decision

1. The application for a full award of costs is refused.
2. The application for a partial award of costs is refused.

Background

3. It was stated at the commencement of the hearing that the appellant was intending to submit an application for an award of costs against the Council. However, prior to the adjournment of the hearing to carry out the site visit the appellant indicated that it was their intention to submit a revised and updated application. In the interests of clarity and in order to avoid uncertainty, it was agreed that a revised application would follow in writing.
4. That application, for a full and partial award of costs, has since been subject to the appropriate periods for the Council to submit a rebuttal and the appellant to provide final comments thereon. I have considered the applications accordingly.

Reasons

5. The appellant's application for a full award of costs is made on substantive grounds, principally that the Council failed to substantiate its reasons for refusal at the hearing and that the Council continued to rely on vague, generalised and inaccurate assertions about the scheme's impact.
6. The application for a full award of costs is predicated on the appellant's opinion that the Council failed to substantiate its reasons for refusal at appeal and that it relied upon vague, generalised and inaccurate assertions regarding the appeal scheme's impact which were unsupported by objective analysis. These arguments apply to the Council's approach to both of the reasons for refusal.

7. Taking the first of the refusal reasons first, I do not share the Council's concerns regarding the effect of the proposal on the current and future employment land needs of the Borough as a whole, or Cockermouth specifically. However, whilst I do not therefore agree with the Council in their assessment of this issue, I do not consider that their interpretation of Allerdale Local Plan (ALP) policy S3 was unreasonable, particularly given the advice and guidance set out in the supporting paragraphs thereto. Whilst on the face of it, I have some sympathy with the appellant's interpretation of the wording of ALP policy S3, subsequent supporting paragraphs clarify the role of this policy in assessing employment proposals. Reference to the Maryport appeal decision¹ was not, in my conclusion, of itself helpful to the Council's case but it served to highlight the range of factors to consider in relation to ALP policy S3 and existing employment sites / employment allocations.
8. The proposal would result in the loss of an allocated employment site. ALP policy DM3 deals with such circumstances and sets out (at (a) to (c)) the circumstances in which alternative uses may be granted permission. Whilst the first refusal reason cites the Council's concern over the implications of the loss of the existing allocated employment site, I do not consider it unreasonable to use ALP policy DM3 (a) to (c) as a means to assess the proposal. That I find against the Council in this respect does not amount to unreasonable behaviour.
9. It is clear that the appeal submissions were iterative on behalf of both main parties. The on-going revisions and redrafting of the Statement of Common Ground (which I will come to separately, below) reflect this, and I do not consider it unreasonable for the appellant to seek to support their case with up to date viability evidence.
10. With regard to the second refusal reason, I heard during the hearing that the policies relied upon therein were broad in their scope and provisions. Whilst it would perhaps have been useful for the Council to have referred specifically to the particular elements of the policies that they considered the proposal to fall foul of, to not do so was not in my experience uncommon, and I am not persuaded that failure to do so was intrinsically unreasonable on their part.
11. The refusal reason is clearly framed in terms of the effects of the loss of, at least with regard to the western part of the site, in part a heavily wooded site and recognition of the contribution that the site makes to the Low Road approach to Cockermouth. I do not consider the Council to have misapplied or misunderstood the provisions of ALP policy DM17 as their case makes clear that they do not consider the alternative – the development proposal's landscaping scheme – to be sufficient to offset the effects of the removal of the significant numbers of trees from, particularly, the western portion of the site.
12. In this respect, I agree with the Council, and it is a matter of judgement as to the effects and impacts of such a change. I accept that the raised areas within the site are remaining elements of the former railway embankment and as such is made ground and not therefore a natural feature. However, the trees and vegetation thereon are a significant feature of the Low Road streetscene and a feature held dear by many of the appeal's interested party. In reaching that conclusion I have also been mindful of the implications not only of the peculiarities of the northern site boundary but also a 'no development' scenario as referred to by the appellant. I am satisfied from the submissions that the

¹ APP/G0908/W/18/3200042

Council were too and formed part of the Development Panel's consideration of this matter.

13. The Council's approach throughout their statement of case was to focus on the two main issues and the policies to support those conclusions. I do not find anything unreasonable in highlighting those policies that refer to 'other matter's in their statement of case, particularly where the representations of interested parties draw such matters out. Those matters have to be considered and, whilst they have not been determinative in my consideration of the main issues, it is not unreasonable for the Council to address them in the manner that they have.
14. The application for a partial award of costs is made on procedural grounds. The Guidance states that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. It goes on to give the example of complying with the requirements and deadlines of the process, delays in providing information and not agreeing a statement of common ground in a timely manner.
15. It was clear in advance of, and at, the hearing that the Statement of Common Ground (SofCG) was work in progress. I accept that the Council's approach to revisions to the SofCG was to protect its position with regard to its Statement of Case and to ensure that the two main issues – the reasons for refusal – were the focal point of the matters in agreement between the parties. The extended back-and-forth process between the parties in raising, and subsequently responding to, queries did not help matters, nor did the manner of presentation of the SofCG to the hearing which was in a heavily amended form, with those amendments, deletions and revisions shown on a 'track changes' basis.
16. Councils are not duty bound to follow the recommendations of their professional officers, and if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and substantiate that reasoning. For the reasons I have set out above, and in my decision, I am satisfied that the Council have done so and I do not consider that the Council has acted unreasonably such that the appellant has incurred unnecessary expense in the appeal process. The applications for an award of full and partial costs cannot therefore succeed.

Graeme Robbie

INSPECTOR