



Costs Decisions

Inquiry Held on 21-30 January 2020

Site visit made on 31 January 2020

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 2nd March 2020

Costs application A in relation to Appeal Ref: APP/W3520/W/18/3215534 Land adjoining Tuffs Road and Maple Way, Eye Suffolk

- 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 Peter, Sylvia and Andrew West & Future Habitats Ltd for a partial award of costs against Mid-Suffolk District Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an outline planning application for residential development of up to 126 dwellings and associated infrastructure including means of access (all other matters reserved for subsequent approval)..
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Costs application B in relation to Appeal Ref: APP/W3520/W/18/3215534 Land adjoining Tuffs Road and Maple Way, Eye Suffolk

- 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 Peter, Sylvia and Andrew West & Future Habitats Ltd for a full award of costs against Mid-Suffolk District Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an outline planning application for residential development of up to 126 dwellings and associated infrastructure including means of access (all other matters reserved for subsequent approval).
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Decision – Application A

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

Decision – Application B

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

Procedural Matters

3. Two separate applications for costs were made by Peter, Sylvia and Andrew West & Future Habitats Ltd against the Council; firstly a partial award in respect of heritage evidence and an additional full application as they consider that the development should have been permitted by the Council. I have dealt with these applications together.
4. A separate costs application has been made by the Council. I have dealt with that as a separate decision.

5. The applications followed a written procedure following the close of the Inquiry, with a timetable set by myself at the event.

Reasons

6. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
7. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The PPG sets out types of behaviour which may give rise to an award against a local planning authority.

Background

8. The appeal was against the non-determination of the planning application (reference DC/18/01777) by Mid Suffolk District Council. Putative reasons for refusal were, however, provided following consideration by the Planning Committee on the 24 June 2019, relating to landscape, living conditions and heritage assets.
9. A separate application at the site was also refused by the Council (reference DC/18/05021), and the putative reasons for refusal for the appealed application match those on the decision notice for the refused scheme. Both applications were recommended for approval by planning officers.
10. The applicants originally requested that the appeal be determined through a written representation's procedure. This was later changed by the Inspectorate to a Hearing and then a Public Inquiry. As part of the change in procedure, various statements, updates, and proofs of evidence were submitted from November 2018, when the appeal was originally submitted, to December 2019 when Inquiry documents were due. A case management conference took place on 11 November 2019 and the Inquiry was held in January 2020.

Application A

11. In terms of application A, the applicants submit that the Council have acted unreasonably by introducing 2 heritage assets potentially affected by the proposed development at a late stage. These were the Grade II listed Barn 100m NW of Abbey Farmhouse ('the Barn') and Grade II listed Abbey Farmhouse. These form part of a former Benedictine Priory complex which also include a scheduled monument and are located to the south east of the site and to the east of Eye.
12. It can be seen from my decision that a number of heritage assets were assessed, including the abovementioned assets. I found that there would be no harm to heritage assets arising from the proposed development.
13. Both the Council's and the applicants' position in relation to heritage assets evolved during the course of the appeal. The Council's position changed in terms of the assets affected and the applicants' position in terms of the harm caused.
14. In chronological order, the applicants' heritage assessment by Voyage Ltd (dated 19.3.2018) assessed Eye Castle, the Church of St Peter and St Paul, Eye

Town Hall and Eye Conservation Area. The Council's first appeal statement (dated June 2019) identified harm to Grade II listed buildings at Bromeland Cottage, Oak Cottage and 81 Langton Green. Their updated statement, dated 1 November 2019 also confirms that the assets assessed by the Heritage Impact Assessment were also affected by the proposed development. This was discussed at the Case Management Conference on the 11 November as I wished to clarify which assets were to be considered at the Inquiry.

15. As part of this, I instructed parties to produce a topic-based Statement of Common Ground dealing specifically with heritage matters. I also asked for copies of the relevant list descriptions to be submitted. These were duly submitted by the Council on the 2nd December 2019, and this included the description for the Grade II listed Barn. From the details before me, there was debate between the respective parties' expert witnesses in terms of the Barn and Abbey Farmhouse which took place in December 2019. The Council also found harm to the barn, but not the Farmhouse. The applicants' heritage expert witness then made a further separate site visit to assess these additional assets as part of preparing her proof of evidence.
16. The putative reason for refusal relating to heritage was, in my view, vague in that it did not specifically identify the designated heritage assets which the Council considered would be harmed. This appears to have caused confusion in the cases presented by the parties.
17. At the time of the Case Management Conference, I was not aware of the presence of the Priory complex, including the Barn and Abbey Farmhouse and this appears to have arisen late in the process, following the engagement of the Council's expert heritage witness. In submitting the list descriptions to the Planning Inspectorate, the Council did not make clear that they also sought to address the Barn as part of their evidence, rather the list description simply formed an attachment to that email with no explanation for its inclusion.
18. While the applicants' expert witness visited the appeal site 7 days after the submission of this email, given that it was not made clear that this asset required attention, I can appreciate why an assessment wasn't undertaken at that time. Only after further discussion with the Council took place did it become obvious that a further assessment was needed in terms of the Barn, and for completeness, Abbey Farmhouse. On this basis, I therefore consider that the Council have acted unreasonably as this should have been identified at a much earlier stage, as a point of procedure.
19. That said, there is a duty under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special regard must be given in considering whether to grant planning permission for development which affects a listed building or its setting. While I found no harm to any heritage assets, I did find that the Priory complex, the Church, the Castle and the Conservation Area all have an interrelationship and all draw part of their significance from their rural surroundings. Both the Barn and Abbey Farmhouse thus required my assessment and attention in order to discharge the abovementioned duties.
20. Accordingly, while it is regrettable that these specific assets were only identified at a late stage, I would have been duty bound to have to consider them in any case. Therefore, any costs were not unnecessary as such matters would have been required to be addressed by the applicants' expert heritage witness.

Application B

21. The applicants' assert that the Council delayed development which should have reasonably been allowed. This was a non-determination appeal related to an application which was lodged with the Council in November 2018, validated in May 2019 and the putative reasons for refusal were agreed by Members in June 2019.
22. In making their claim for costs, the applicants have drawn my attention to the Committee reports for the separate application DC/18/05021. This was originally presented to Committee for approval in January 2019, and following a deferral, was again presented in March 2019, whereby permission was refused.
23. While that application is not the subject of an appeal, as I have stated above, the putative reasons for refusal for the appeal scheme (DC/18/01777) matched those of the other scheme. The schemes are effectively the same, although the access arrangements were slightly different. This background and separate application is relevant to the costs application here as it relates to how the putative reasons for refusal were arrived at.
24. I note the recommendation for approval by Planning Officers. Members sought deferral in the first instance. It has been long established practice that the Council Members in this case are entitled not to take the professional advice of Officers, including their own internal consultees such as the Conservation, Highways and Environmental Health personnel, so long as a case could be made for the contrary view.
25. At the Inquiry, the Council, through their expert witnesses, mounted a detailed case in terms of landscape, heritage and living conditions. It follows, therefore, that in establishing the putative reasons for refusal, Members were not unreasonable in raising such concerns.
26. The parties' respective positions on a number of the substantive matters evolved during the appeal process. This was, in part, due to the length of time between the submission of the appeal and the Inquiry itself. Specifically, the Council's position relating to 5-year housing land supply, and whether the most important policies were considered to be out of date, had changed from its position in 2018. This was also examined by other Inspectors in a number of appeal decisions, published both before and after the abovementioned determination dates.
27. The status of the Eye Neighbourhood Plan also evolved within that period, with the Examiner's report dated 25 October 2019 being issued. Other relevant matters, such as the Joint Emerging Local Plan, had not had much changed in the intervening period.
28. Based upon the conflict with the Eye Neighbourhood Plan and the harm to landscape character, I have dismissed the appeal. In my decision, I recognise that this was finely balanced and that the matter of the Neighbourhood Plan was the determinative factor. I found no harm in respect of living conditions, accessibility, heritage assets and highway safety. I also found that the Council is able to demonstrate a 5-year housing land supply and that the policies most important to the appeal were up-to-date. Accordingly, the tilted balance in

paragraph 11 of the Framework was not enacted and a straightforward planning balance was undertaken.

29. However, I can find no evidence of unreasonable behaviour by the Council as their decision was properly supported on appeal.
30. While I have found the issue of the Neighbourhood Plan to be determinative given its advanced stage, such changes are an inevitable part of the passage of time. There is no evidence to suggest that Members were unduly giving this unreasonable weight in the planning balance at the time they reached their decision. This was not cited as a specific reason for refusal, for example.
31. Similarly, while the Council had not gone through a formal assessment process of establishing their housing land supply position, they clearly defended their March 2019 Statement. Again, there is no evidence to suggest that the Council were unreasonable in their approach. I am mindful that their position was tested at a different Public Inquiry was subsequently confirmed by another Inspector in August 2019 but that in itself does not suggest that the Council have retrospectively sought to justify the reasoning of their Members. Again, this is just par for the course over the natural passage of time.
32. Overall, I find there to be no unreasonable behaviour and as such, there can be no question that the applicants were put to unnecessary or wasted expense.

Conclusion

33. I therefore conclude that, for the reasons set out above both of the costs applications fail.

C Searson

INSPECTOR