
Costs Decisions

Hearing Held on 11 February 2020

Site visit made on 18 February 2020

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Costs application A in relation to Appeal Ref: APP/X0360/W/19/3224323 Malmesbury Estate, Remenham Hill, Henley-on-Thames, Berks, RG9 3HN.

- 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 Rilex International for a full award of costs against Wokingham Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of an existing outbuilding and replacement with grooms accommodation with a players gym.
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Costs application B in relation to Appeal Ref: APP/X0360/W/19/3224323 Malmesbury Estate, Remenham Hill, Henley-on-Thames, Berks, RG9 3HN.

- 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 Wokingham Borough Council for a full award of costs against Rilex International.
 - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of an existing outbuilding and replacement with grooms accommodation with a players gym.
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Costs application C in relation to Appeal Ref: APP/X0360/W/19/3224329 Park Place Stables, Remenham Hill, Henley-on-Thames, Berks, RG9 3HN.

- 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 Durio Ltd for a full award of costs against Wokingham Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a new American barn and permanent outdoor arena.
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Costs application D in relation to Appeal Ref: APP/X0360/W/19/3224329 Park Place Stables, Remenham Hill, Henley-on-Thames, Berks, RG9 3HN.

- 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 Wokingham Borough Council for a full award of costs against Durio Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for a new American barn and permanent outdoor arena.
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Decisions

1. The applications are all refused.

Preliminary Matter

2. There is much similarity with the claims and responses made under applications A and C. This is the same for applications B and D.

Reasons

3. The Government's Planning Practice Guidance advises that parties in appeal proceedings normally meet their own costs, but costs may be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be either procedural or substantive.
4. A substantive award of costs could be made against a local planning authority if it prevented or delayed development which should clearly be permitted. Such an award could be made against an appellant if the appeal had no reasonable prospect of succeeding.
5. Appellants and local planning authorities are required to behave reasonably in relation to procedural matters at appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include delay in providing information or other failure to adhere to deadlines and not agreeing a statement of common ground in a timely manner.

Applications A and C

6. In determining the appeals and having considered the provisions of the National Planning Policy Framework and the development plan, I found that elements of the proposals would amount to inappropriate development within the Green Belt (GB) and/or would harm the openness of the GB. This is similar to the findings of the Council when it determined the planning applications.
7. Having arrived at that position, it was then necessary for the Council to consider whether any other considerations would clearly outweigh the harm to the GB and the other harm that it had identified, so as to amount to the very special circumstances (vsc) necessary to justify granting permission.
8. Whilst a proposal could be ancillary to a lawful use of land within the GB this does not obviate the planning policy requirement to ascertain whether or not it would be inappropriate development within the GB. Furthermore, the Council's previous decisions to grant permissions for other polo/equine-related developments do not amount to an inconsistency in its approach. Each application must be determined on its own merits and when the Council determined these earlier applications the circumstances were materially different. This included not constructing some previously approved buildings, the removal of some others and permission limited to a temporary period.
9. In determining the applications that were the subject of the appeals the Council may have placed too much emphasis on the provisions of a section 106 agreement and an Integrated Estate Management Plan (IEMP) for the land. However, there is nothing of substance to support the applicants' argument that the Council misapplied GB policy or failed to have proper regard to the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004.

10. Moreover, given the uncertainty surrounding the planning status of some polo/equine-related developments in or around the appeal sites, it is unsurprising that the Council made representations concerning the scale of activities taking place and the relationship of these developments, as well as the appeal proposals, to the terms of the previous permissions. The appellants, who were professionally represented throughout, did little to assist the Council's understanding by leaving these matters unresolved.
11. In support of the appeals, the appellants submitted detailed planning, heritage and landscape statements, as well as evidence to support the argument concerning the need for the proposed grooms accommodation. However, in determining the applications the Council had sought and obtained the advice of its conservation and landscape officers. The Council was also familiar with determining applications for equine-related developments.
12. At appeal, the Council, with the exception of the likely impact on the candidate AONB¹, substantiated its concerns on these matters through the detailed evidence of its landscape consultant and planning officer. It was also ably supported by the Statement of the Berkshire Gardens Trust², including its representative, who attended and gave cogent evidence at the Hearing. There is nothing of substance to support the appellants' argument that the Council failed to undertake adequate assessments of the impact of the proposed development upon the registered park and garden and the wider landscape or misunderstood the cases that had been advanced for additional buildings.
13. As the appeals have been dismissed, the Council did not delay or prevent development that should clearly have been permitted, or otherwise cause the appellants to incur any unnecessary or wasted expense.

Applications B and D

14. There was no intention to mislead the Council or to prejudice its cases by the oversight of its agent in not forwarding the heritage, landscape and equine evidence in accordance with the prescribed timetable. However, it is incumbent on all parties to appeal proceedings to ensure that they comply with the procedures and timetable for submitting evidence. It is not for an opposing party or the Planning Inspectorate to chase or remind parties of their obligations. The appellants acted unreasonably by not forwarding these detailed and lengthy Statements to the Council in a timely manner.
15. I appreciate how the late submission of some of the appellants' evidence caused difficulties for the Council and its officers in preparing its cases. However, all of the evidence was before the Council a number of weeks before the Hearing opened. It is not unusual for local planning authorities to instruct consultants to act on their behalf in appeal proceedings. It is very far from certain that the timing of the receipt of the appellants' landscape and heritage evidence was the cause for the Council instructing a consultant to act on its behalf regarding these matters.
16. The Council's landscape consultant was able to take into account the appellants' heritage and landscape evidence in submitting his Statement, and

¹ This was only a very minor part of the Council's case on landscape grounds.

² The Garden History Society (now part of The Gardens Trust) is a statutory consultee for development likely to affect registered gardens or parks.

- the planning officer, although inconvenienced by having to cancel some annual leave, was able to consider/respond to the appellants' equine evidence. The Council's cases were not therefore prejudiced by the appellants' behaviour and the costs incurred in responding to the 'late' evidence would have arisen even if this had had been submitted in accordance with the prescribed timetable.
17. Moreover, the Council did not help itself by its failure to agree and submit a Statement of Common Ground (SoCG) with the appellants. A draft SoCG had been prepared and submitted by the appellants at an early stage in the proceedings and the appellants had chased the Council for a response. Had the Council met this procedural requirement and engaged in meaningful discussions with the appellants in respect of a SoCG, then it could have been alerted to the heritage, landscape and equine evidence upon which the appellants would be reliant. An agreed SoCG can be helpful to all parties in preparing for a Hearing or Inquiry.
 18. The appellants' unreasonable behaviour in not complying with the prescribed timetable did not cause the Council to incur unnecessary or wasted expense.
 19. For reasons explained by its planning expert, it was the appellants' cases that the section 106 agreement and the IEMP should not have a material bearing on the outcome of the appeals. Even if the appellants were wrong on this matter, given the full extent of the planning history, it was not an unreasonable position for them to adopt.
 20. There is nothing of substance to demonstrate that the Council incurred unnecessary or wasted expense in arguing that the section 106 agreement and IEMP were important material considerations. It was evident from the planning officers reports that these matters would be an integral part of the Council's cases irrespective of whether or not the appellants agreed. In adopting a contrary stance to the Council the appellants did not act unreasonably.
 21. It was also not unreasonable for the appellants to argue that the proposals would not be inappropriate development within the GB and, as a consequence, vsc would not need to be demonstrated. In the event of a contrary finding, the appellants identified matters that should be taken into account in considering vsc. Whilst I have found differently to the appellants, this was a matter of planning judgement and these were not frivolous or vexatious grounds of appeal. The appellants did not act unreasonably by lodging these appeals and arguing that vsc did not have to exist for planning permissions to be granted.

Overall Conclusions

22. Given all of the above, I conclude that the behaviour of the respective parties did not cause the opposing side (the applicants) to incur unnecessary or wasted expense. None of the applications should therefore succeed.

Neil Pope

Inspector