The Planning Inspectorate

Costs Decision

Site visit made on 3 December 2019

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2020

Costs application in relation to Appeal Ref: APP/Y3940/W/19/3231872 Ravenscourt, junction at Tetbury Lane and The Street north to Crudwell House, Crudwell SN16 6ER

- 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 M Whelan for a full award of costs against Wiltshire Council.
- The appeal was against the refusal of planning permission for alterations to parking hardstanding.

Decision

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

Reasons

2. 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 or wasted expense in the appeal process.

3. The applicant considers that there was unreasonable behaviour by the local planning authority (LPA) for the reasons considered below, which resulted in the applicant having to appeal against the refused planning application.

4. Paragraph 049[1] of the PPG sets out various types of behaviour which may give rise to a substantive award of costs against an LPA. The guidance explains that LPAs are at risk of an award of costs if they behave unreasonably with respect to preventing or delaying development which should clearly be permitted, having regard to its accordance with the Development Plan, National Policy and any other material considerations; Failure to produce evidence to substantiate each reason for refusal on appeal; Vague, general or inaccurate assertions about proposal's impact, which are unsupported by any objective analysis; Refusing planning permission on a planning ground capable of being dealt with by conditions; and not determining similar cases in a similar manner.

5. From the case officers report it is apparent that the LPA had regard to parking associated with historic agricultural use of the site along with that in relation to past planning permissions. Nevertheless, the development subject of the appeal relates to a larger area and includes engineering works and the creation of gravelled hardstanding, the LPA took these factors into account when determining the planning application.

[1] 049 reference ID: 16-049-20140306

6. Moreover, the consideration of the planning application as set out in the case officers report included an assessment of the effects of the development on the character and appearance of the area including the Crudwell Conservation Area. This assessment is supported by reference to specific and relevant policies to the application. The decision notice also clearly states the policies and the paragraphs of the Framework, which the development was found to be in conflict with.

7. In relation to the issue of flood risk, the LPA validated the application without a Flood Risk Assessment and proceeded to determine it on that basis. Furthermore, I have not been made aware of any request being made to the appellant for additional information, specifically in relation to flood risk matters.

8. Although the LPA advises that it holds records of ground and surface water flooding, and that the site lies within a ground water vulnerability zone and groundwater source protection zone, there is no substantive evidence of these or how the development would affect these or the nearby unnamed watercourse. Moreover, the Council's own drainage engineer[2] confirmed that there was no objection to the development. Therefore, I consider that the LPA has failed to produce evidence to substantiate this reason for refusal on appeal.

9. The planning history of a site and enforcement investigations are capable of being considerations in the determination of a planning application and I have had regard to these in relation to the appeal site. From these it is apparent that the area to the rear of the Dutch barn was initially proposed to support a commercial use from the site.

10. Notwithstanding the above and the largely retrospective nature of the development, the applicant's planning application and supporting information clearly stated that the use of the gravelled hardstanding was for vehicle parking in association with the residential use of Ravenscourt (the host property). In light of this, in my view, the LPA gave unreasonable consideration and weight to the use of the gravelled hardstanding for parking in association with the alleged commercial use. In particular, the LPA's third reason for refusing the planning application was largely based on this. As such, this amounts to inaccurate assertions about the developments impact.

11. Although I cannot be certain that I have the full details of all on-going discussions between the main parties during the planning application process, the LPA did suggest supporting the applicant's planning application, subject to conditions. Nonetheless, for the reasons given by the main parties a mutually agreeable position was not achieved. Therefore, this in itself does not constitute unreasonable behaviour.

12. Drawing on the above reasons, I find that the LPA acted unreasonably. However, I have also found that in considering the effects of the development on the character and appearance of the area and the Crudwell Conservation Area, it is only acceptable subject to conditions requiring a parking layout and an enhanced landscaping scheme, which were suggested by the appellant on appeal. Furthermore, in respect of this particular issue and on the basis of the information before me, I find nothing to clearly suggest that through further communications a favourable outcome for the applicant could have been

[2] Consultation response from Wiltshire Council Drainage Engineer, dated 15 November 2018

achieved during the application process, thus avoiding the need for the appeal altogether and any associated expense.

13. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated.

M Aqbal
INSPECTOR