



Costs Decision

Site visit made on 8 October 2019

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th April 2020

Costs application in relation to Appeal Ref: APP/W1850/W/19/3231560 Land adj The Stockton Cross Inn, Kimbolton, Leominster

- 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 Border Oak Design & Construction Ltd for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for erection of a dwelling.
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. Planning Practice Guidance ('PPG') 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.
3. The appellant submits that the Council has acted unreasonably, firstly, in that it has failed to substantiate its reason for refusal and, secondly, that it prolonged the proceedings by effectively introducing a new reason for refusal.
4. The Council's sole reason for refusal stated that the development would entail the loss of part of the car park used in connection with Stockton Cross Inn, which would potentially undermine its viability. However, the appellant submitted documentation with the appeal confirming that the site was in a separate ownership to the public house and that no formal agreement existed to use the land for parking purposes. In this regard, the Council's Appeal Statement concludes that *"had this crucial information been submitted in support of the original application, a different decision may have been reached by the Council in its determination"*. Accordingly, the Council withdrew its reason for refusal.
5. Prior to its refusal of planning permission, the appellant submitted a letter to the Council (dated 1 November 2018) clearly stating that the appeal site was in a separate ownership to the pub, and that no formal agreement was in place for its use as a parking area. This letter is dated 4 months prior to the date of the Decision Notice (1 March 2019). Moreover, the operators of the public house did not object to the development on these grounds. However, the Council did not seek any further clarification on this matter, and instead sought to refuse permission based largely on objections submitted by local residents. In my view, it was unreasonable of the Council to refuse planning permission

on this basis, without seeking further clarification, particularly when it had received a letter from the appellant clearly setting out the ownership position.

6. Separately, the Council referred to the Habitats Regulations in its Appeal Statement despite this not being a reason for refusal. In this regard, it advised that the application required a Habitat Regulations Assessment and a 'no objection' response from Natural England prior to the grant of planning consent. The appellant asserts that the court case referred to by the Council was handed down nearly four months before the application was determined, and so should have been raised at an earlier date. However, from the information before me, it appears that the full implications of that judgement were not immediately apparent to the Council. In this regard, Natural England wrote to the Council in both July and August 2019 to advise of its implications for development within the River Lugg Catchment. It was only at this stage that the full implications became clear to the Council.
7. It is asserted that had the Council not refused planning permission on unreasonable grounds, then the Habitat Regulations would never have been considered, thus avoiding the appeal process altogether. However, whilst the Council did not raise this matter at application stage, the correct approach would have been to have done so. In the circumstances of this case, I do not consider that the Council acted unreasonably in drawing my attention to this matter during the course of the appeal.

Conclusion

8. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Herefordshire Council shall pay to Border Oak Design & Construction Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in rebutting the reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. Border Oak Design & Construction Ltd is now invited to submit to Herefordshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Thomas Hatfield

INSPECTOR