



Costs Decision

Site visit made on 22 May 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 4 June 2020

Costs application in relation to Appeal Ref: APP/V3310/W/19/3240159 Four Forks House, Charlynch Road, Spaxton, Bridgwater TA5 1BJ

- 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 Mrs Christina Harrison-Flynn of Pogo Plum Ltd. against Sedgemoor District Council.
- The appeal was against the refusal of the Council to grant planning permission for development proposed via application Ref 45/18/00014 ACN, dated 8 June 2018, namely the demolition of the existing garage to Four Forks House and the erection of 13 dwellings (C3) with associated access works, pedestrian and cycling routes, parking, landscaping and drainage works.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.¹ Costs applications may relate to events, if not expenses incurred, before an appeal was brought.²

The appellant's case

3. The appellant's case for a full award of costs is on three substantive grounds. Firstly it is that the Council failed to produce robust evidence in support of its refusal of planning permission Ref 45/18/00014 ACN. In brief, although amended, the development proposed was for 13 dwellings at a site which straddles the development boundary of Spaxton, a 'tier three' settlement as defined in the Sedgemoor Local Plan 2011-2032 (adopted 20 February 2019, the 'LP'). The Council's decision notice stated that the scheme would have had 'a significant adverse impact on the local landscape character', amongst other things in conflict with LP policy D19.
4. On that ground the appellant has brought to my attention pre-decision correspondence from a Council landscape officer of 24 July 2018, ostensibly differing from the position ultimately arrived at, in which it is stated 'whilst it can be demonstrated from more distant views the overall impact will be relatively limited...'. The appellant adds to that argument in clarifying that the Council put forward 'no objective or analysis or evidence' in line with industry

¹ Reference ID: 16-028-20140306.

² PPG Reference ID: 16-032-20140306.

standards which arrived at different conclusion to the appellant's first and second Landscape and Visual Impact Assessments ('LVIA1' 'LVIA2').³

5. Secondly the appellant states that, in referring to the visual implications of the scheme from viewpoints identified in LVIA1, the Council's approach at appeal is 'tantamount to the introduction of fresh evidence at the late stage and is considered to be unreasonable'. Third, the appellant sets out that 'within the officer's delegated report, the Council also fails, in our view, to properly judge how any potential conflict with Local Plan Policy D2 affects the compliance of the application with the Local Plan as a whole which is required through case law', referencing in that context the decision handed down in *Corbett, R (On the Application Of) v Cornwall Council & Anor* (the 'Corbett Judgement').⁴ I address those points in turn.

First ground

6. Whilst the 'failure to produce evidence' to substantiate reasons for refusal is given in the Planning Practice Guidance ('PPG') as an example of a type of behaviour that may give rise to a substantive award of costs against a local planning authority,⁵ the onus is principally on an applicant to make their case.⁶ There is no provision that I am aware of which compels a local planning authority to produce countervailing evidence such as a Landscape and Visual Impact Assessment in response to a proposal. Setting logical consistency to one side, the decision ultimately reached by a Council in respect of a planning application may legitimately differ from informal indications, or the views of internally-consulted officers.
7. Returning to logical consistency, the element of correspondence of 24 July 2018 referenced above is not as clear cut as it is summarised by the appellant, in my view. The phrase 'relatively limited' is not the same thing as indicating the scheme would result in no effect, or a neutral effect on character and appearance. LVIA1 and LVIA2, furthermore, considered a number of vantage points ranging from those by the access to the site ('PV1' in LVIA1) to those more than 500 metres away from the site ('PV1', 'PV2' in LVIA2). 'More distant views', as noted in the correspondence referenced above, does not relate to all viewpoints.
8. Notwithstanding the above, I acknowledge there is a disconnect between 'relatively limited' and 'significant' effects. Consequently, whilst I understand the motivation behind the appellant's costs application, in my view it is founded on a misconception. As set out above 'significant' is the adjective used in LP policy D19 to qualify where adverse landscape effects may count against a scheme.
9. At paragraph 40 of the associated appeal, I reason that 'significant' is not, in common use, always the antonym of insignificant. However it does not have the same meaning as 'substantial', i.e. of great importance, as is the essence of the appellant's argument. The ordinary definition of significant is important, or large enough to have an effect to be noticed. As set out in that paragraph of

³ Both undertaken by Clark Landscape Design, LVIA1 dated May 2018, LVIA2 dated September 2019.

⁴ [2020] EWCA Civ 508.

⁵ Reference ID: 16-049-201040306.

⁶ Section 62(3) of the Town and Country Planning Act 1990 as amended.

the appeal decision also there are particular aspects of policy D19 which indicate its intended application. Although costs applications and planning appeals are dealt with separately, the two must reconcile with one another. As I have found that significant adverse effects would result, I cannot agree that the Council was irrational in arriving at the same conclusion.

Second ground

10. The appellant's second contention, that the Council inappropriately referred to the effects of the proposal from viewpoints assessed in LVIA1 at appeal, is in turn founded on the appellant's view that the Council's position implied that they were content with the scale, location and siting of the proposal development insofar as related to 10 of the 13 dwellings proposed (plots 1-10, rather than 11-13). Paragraphs 15 to 18 of the associated appeal decision relate to that matter in detail.
11. In brief, on a plain reading of the Council's decision notice and case at appeal, the Council's objection to the scheme was not solely related to a particular element of it (notwithstanding that plots 11-13 are not readily severable from the scheme as a whole). I also note, at paragraph 18 of the appeal decision, that the dwellings proposed at plots 11-13 would be visible from 'PV1' as identified in LVIA1. In that context it is not unreasonable for the Council to have referred to the findings of LVIA1 at appeal.

Third ground

12. The appellant sets out that 'within the officer's delegated report, the Council also fails, in our view, to properly judge how any potential conflict with Local Plan policy D2 affects the compliance of the application with the Local Plan as a whole which is required through case law', referring to the Corbett Judgement in that context. It is true that LP policy D2 is referenced cursorily in the officer report.
13. As set out above the appellant's principal argument for an award of costs is that the Council cannot 'conceivably' have concluded that landscape effects would have been significantly adverse. Following the appellant's argument, it is contended that a 'significant adverse' effect is greater than merely where development fails to reflect local landscape character to some degree. However the word 'significant' is not used in policy D2.⁷
14. Policy D2 more generally sets out how development should 'respond positively to and reflects the particular local characteristics of the site and the identity of the surrounding area' (sic.). Following the appellant's logic, a finding of 'significant adverse' effects with regard to policy D19 would also, inevitably, represent a failure to comply with the apparently less stringent requirements of policy D2 as regards landscape character.
15. It may be instead that the appellant's reference to Corbett is effectively arguing that there was some procedural error to consider the development plan as a whole, thereby failing to reconcile any tensions between the tests in policy D19 and D2. However, there again, the Corbett judgement does not advance the appellant's case for an award of costs.

⁷ Nor in policy T3a which is also relevant to the development proposed.

16. Paragraph 41 of the Corbett judgement is particularly relevant in that context. Albeit arrived at in a different context, there is likewise no express statement in LP policy D19 or D2 indicating that one has primacy over the other. Therefore, hypothetically, it may legitimately be the case that a proposal may comply with certain provisions of policy D19, but not those of policy D2 (or vice-versa).

Other matters

17. Turning to the Council's case at appeal, the nature of the development proposed and its surrounding context are explained in detail; the appellant does not appear to allege that there are factual inaccuracies in that regard. The Council have held the development proposed up against relevant elements of the development plan and National Planning Policy Framework, and evidently given thorough consideration to the appellant's evidence. The Council has also considered the benefits of the proposal, notably the support accorded via LP policy T3a to provision of affordable housing in rural areas, in reaching a balanced view on the merits of the scheme.⁸
18. For the foregoing reasons, the acceptability of the proposal and the essence of the appellant's case for an award of costs centre around matters of planning judgement. Whilst the appellant's perspective on that matter understandably differs from the decision of the Council, inherent in my reasoning above is that the Council's opposition to the scheme was based on accurate observations of the scheme and taken in the context of the correct policy parameters. Consequently, based on all the evidence before me, no action or inaction taken by the Council in this instance can be said to amount to unreasonable behaviour directly resulting in unnecessary or wasted expense.

Conclusion

19. Having taken account of all other matters raised and with regard to relevant elements of the PPG, for the above reasons I conclude that an award of costs is not justified in this instance.

Thomas Bristow
INSPECTOR

⁸ Both in section 7.1 of the Council's appeal statement and in the Council's officer report.