
Costs Decision

Site visit made on 27 May 2020

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2020

Costs application in relation to Appeal Ref: APP/M1005/W/15/3243348 Moor Lane, Kirk Langley, Ashbourne

- 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 Chevin Homes Ltd, Helen Carter and Alistair McGee for a partial award of costs against Amber Valley Borough Council.
 - The appeal was against the refusal of planning permission for residential development of up to 14 dwellings with associated landscaping and public open space (outline with all matters reserved except access).
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance 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's claim for costs refers to the Council's first reason for refusal, which relates to the heritage impacts of the proposal which included the impact on the Scheduled Monument and the impact of the proposal on the historic landscape. The appellant considers that the Council failed to illicit the views of statutory consultees on revisions to the scheme and if they had done so the first reason for refusal would have fallen away.
4. I have examined the documents submitted to me which relate to the evolution of the scheme and its impact on heritage assets. The Council provided a copy of their committee report which summarises the comments of Historic England, the County Archaeologist and the Council's own Heritage advisor. The report also sets out the officer's analysis of these comments and reasoning in relation to heritage assets.
5. Evidence supplied by the Council shows that the County Archaeologist was consulted on the latest illustrative plan on the 11th of October. I am advised that the County Archaeologist replied to this consultation, although a copy of this response is not provided, and it is not evident from the Committee Report what these comments were, as the report contains only earlier comments relating to an earlier iteration of the scheme.

6. The reason for refusal refers to the field pattern to the north being eroded by the development. The historic landscape is identified in the form of 2 Historic Environment Records (HERS) – *HDR 5767 – Fields at Langley Common, Kirk Langley* which I am advised comprises the development site and *HDR 5728 Fields Along Ashbourne Road, Kirk Langley which lies to the north*. Both can be considered non-designated heritage assets.
7. The Committee Report provides very scant analysis of why the field patterns are important, or why the development would impact on their significance. The earlier comments of the County Archaeologist are reproduced, but the aspect of the proposal which the County Archaeologist appeared to find intrusive, the avenue of trees, had been removed by the latest revision to the scheme, a matter which the report acknowledges. It is therefore unclear why the Council reached the conclusion that it did.
8. Decision makers are not bound to follow the advice of their statutory consultees. Furthermore, the comments made to the applicant by the County Archaeologist appear to have been informal discussions on the evolution of the scheme. They were not a formal response to a request for advice from the Planning Authority. They do not predetermine what the formal response of the consultee might be, having regard to other aspects of the scheme, and do not bind the Council to accepting these views in any case. Neither, having regard to the statutory duty explicit in S16(2) and S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 am I bound to follow such advice. In the event I concur with the Council that the setting of the Scheduled Monument would be harmed.
9. However, it should be clear to the applicant why the application was refused. On the basis of the Committee Report and the reason for refusal the appellant would not have known why the latest revisions were unacceptable as the analysis, which reiterates comments which were made on earlier versions of the illustrative layout, does not explain why these comments were still considered relevant to the latest revision. In this regard the Council's behaviour was unreasonable and the applicant would have been obliged to pursue the matter at appeal.
10. Although in the event the appeal was dismissed, the appellant will have expended unnecessary expense in pursuing the appeal, in particular in relation to the aspects of the first reason for refusal which relate to heritage assets. This is not altered by the subsequent appeal decision or a finding of harm in relation to other aspects of the appeal.
11. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 powers in that behalf, IT IS HEREBY ORDERED that Amber Valley Borough Council shall pay to Chevin Homes Ltd, Helen Carter and Alistair McGee the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to responding to the Council's first reason for refusal regarding harm to heritage assets.

13. The applicant is now invited to submit to Amber Valley Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Anne Jordan

INSPECTOR