



Costs Report to the Secretary of State for Housing, Communities and Local Government

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an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Date 12 September 2018

TOWN AND COUNTRY PLANNING ACT 1990
AMBER VALLEY BOROUGH COUNCIL
WHITEHOUSE FARM, 153 BELPER LANE, BELPER
APPEAL BY
WHEELDON BROTHERS LTD

Hearing Held on 3 July 2018, Site Visit held on 4 July 2018.

Whitehouse farm, 153 Belper Lane, Hilltop, Belper DE56 2UJ

File Ref: APP/M1005/W/17/3188009

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- The application is made under the Town and Country Planning Act 1990, sections 78 and 322, and the Local Government Act 1972, section 250(5).
- The application is made by Wheeldon Brothers Ltd for a full award of costs against Amber Valley Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for residential development of 118 dwellings including sustainable drainage and infrastructure, demolition of 153 Belper Lane and outbuildings, extension and enhancement of existing public open space including new recreational facilities, landscape and ecological enhancements.

Summary of Recommendation: That the application for an award of costs be refused.

Preliminary Matters

1. The appeal to which the claim for costs relates was recovered for a decision by the Secretary of State for Housing, Communities and Local Government by a direction dated 3 July 2018. The reason given for this direction is that “the appeals involve proposals which would have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site”.
2. Since the application for costs was made the National Planning Policy Framework (the Framework) has been revised and this Report has been prepared in light of the revised Framework with all references relating to paragraph numbering in that document unless otherwise stated. The parties are aware of the revised Framework.
3. The Framework’s provisions relating to how effects on designated and non-designated heritage assets should be considered are effectively the same albeit referred to under different paragraph numbers. Similarly the revised Framework emphasises the benefits of early engagement and front-loading. The revisions have not had a material effect on the grounds or the submissions of the parties.
4. The application and responses were made in writing and no further oral submissions were made at the Hearing.

The Submission for Wheeldon Brothers Ltd

5. The Council acted unreasonably in respect of the substance of the appeal. In particular the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations. The application was extensively assessed against the development plan, national policy and other material considerations and the officer's recommendation was to approve the scheme as the clear public benefit outweighed any perceived harm upon the World Heritage Site.
6. The advice received at pre-application stage was subsequently contradicted in representations by third parties and Council officers during the course of the determination of the application. This resulted in numerous reiterations of the

scheme and amendments to the supporting technical reports and significant delays to the application process, which could have been avoided from the start.

The Response by Amber Valley Borough Council

First ground

7. Despite the officer's recommendation, the Council's Planning Board (the Board) resolved to refuse the proposal. The Board is entitled, in assessment of all the information, to make its own judgement on the planning merits of the application. The Board resolved that the proposal would be harmful to the Derwent Valley Mills World Heritage Site, which was informed by the formal consultee responses of the Derwent Valley Mills World Heritage Site Partnership. The Members of the Board were entitled to undertake their own assessment of planning balance and arrive at a different conclusion to that of its officers.

Second ground

8. The pre-application process is undertaken on an informal basis and the advice is given without assurance or prejudice to the future consideration of a formal application. The Council undertakes consultation with relevant consultees and relays these comments as part of the pre-application process. Consultees are not bound by initial comments made and are entitled to make more detailed comments as part of their consideration of formal applications. The Council considers it has not acted unreasonably in this regard.

Reply by Wheeldon Brothers Ltd

First ground

9. The application was refused contrary to officer's clear advice, set out in a detailed Board Report, which carefully set out the weight to be given to the relevant issues and the overall planning balance, in particular that any 'less than substantial harm' to the heritage asset would be outweighed by public benefits of the scheme. The appellant's appeal submission reflected this approach and conclusion.
10. The appellant considers that it was clear from attending the Board meeting that members did not make the proper distinction between the consideration given to non-designated and designated heritage assets. The proposal would demolish Whitehouse Farm, a non-designated heritage asset lying in the Buffer Zone outside rather than within the World Heritage Site (WHS), and whilst the Framework makes it clear that a 'balanced judgement' is required it does not require 'public benefit' or any other benefit to be demonstrated.
11. The Council mistakenly conflated the impacts on, and the significance of, the non-designated and designated heritage assets. Historic association with former owners of Whitehouse Farm does not confer an additional level of significance on the non-designated heritage asset such that it should be considered as a part of the designated heritage asset. The balanced judgement needed to consider the demolition of Whitehouse Farm must be considered entirely distinctly from that of the 'less than substantial harm' to the designated heritage asset which requires harm to be weighed against public benefit. Conflating the two issues incorrectly applies national planning policy and is unreasonable.

12. While members are not obliged to accept officers' recommendations, in taking a contrary decision, it is incumbent upon them to justify it on clear planning grounds. The reason for refusal states that there would be less than substantial harm to the Outstanding Universal Values of the WHS, but with no clear evidence for reaching the conclusion that the public benefits do not outweigh the level of 'less than substantial harm'. Matters of judgement can be subjective so clear planning reasons, based on objective assessment against the relevant policy considerations, are necessary to explain why Members came to their conclusions and thus why they considered the officers' conclusions to be wrong.
13. Members did not themselves reassess the significance of the asset before coming to the conclusion that the appeal proposal would cause a level of 'less than substantial harm' that was not outweighed by the identified public benefits. There was no evidence for that conclusion and that is not the proper test. The Framework makes clear that it is the impact of development on the significance of a heritage asset that must be considered, and many assets contain features that do not contribute to their significance.

Second ground

14. The Framework advises that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Accordingly the proposal was discussed with a range of Council officers and other consultees over a period of two years. Design is an iterative process and the proposals were refined through a series of discussions and negotiations with the officers, taking account of comments by neighbours and consultees. Much of the discussion centred on the effects of the proposal on the significance of the WHS. Council officers concluded that all the technical requirements would be met and that the proposal would cause no significant harm to the significance of the relevant heritage assets.
15. They recognised the numerous public benefits of the proposal and, against the national and local policy background, concluded that these outweighed the less than substantial harm identified. A clear recommendation of approval, subject to a comprehensive list of conditions, was made.

Inspector's Conclusions

16. The 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.

First ground

17. The Council is entitled to take a different view from that recommended by officers, and that in itself is not unreasonable. The Council's reason for refusal is set out in clear terms. It sets out that there would be less than substantial harm to the WHS and that this would not be outweighed by public benefits of the scheme. This reflects the correct Framework balance in that respect with the consequent reference to the presumption in favour of sustainable development. The refusal reason referred to the relevant development plan and national policies. It is also clear from the both the Board report and the Council's statement that the decision turns on a planning judgement based on the weighing and balancing various factors.

18. The reason for refusal does not mention the non-designated heritage asset, Whitehouse Farm. However, the reason reflects the Council's view, set out in their statement and at the Hearing, that the loss of Whitehouse Farm would affect the setting, and consequently the significance, of the WHS along with other aspects of the development which they considered would have a harmful effect on significance. It is clear from the Council's reason and subsequent statement that it was not only the loss of Whitehouse Farm that they considered would harm the setting of the WHS but also the erosion of the rural landscape within that setting. The Council's statement also establishes that Whitehouse Farm is a non-designated heritage asset, even though it goes on to consider the effects of its loss in terms the effect it would have on the significance of the WHS.
19. The Framework sets different policies and considerations for how effects on the significance of designated and non-designated heritage assets should be considered. However, it does not specify what factors should be balanced in the judgement it requires when weighing applications. There is no reason why public benefits of the scheme could not be weighed as part of that balanced judgement required in terms of non-designated heritage assets.
20. Furthermore, if a non-designated heritage asset is also considered to contribute to the significance a designated heritage asset derives from its setting it would be appropriate to consider the effect of its loss in that context.
21. Therefore, a balanced judgment was necessary to consider the proposal in light of local and national policies. It was not so clear that the development should be permitted having regard to its accordance with the development plan, national policy and any other material considerations. Although the recommendation to the Secretary of State on the planning merits of the appeal in the Appeal report which accompanies this Costs Report is different to the Council's decision, overall the Council did not act unreasonably by refusing the application.

Second ground

22. Pre-application engagement is encouraged by the Framework. Given the considerable lead in time that the appellant refers to it will no doubt have been frustrating to find that advice had changed necessitating further changes once the application had been submitted and during its consideration. Additionally, in the case of at least one consultee, their position had reversed from pre-application stage.
23. However, pre-application discussions are not binding on the Council. The Council did not act unreasonably in taking a contrary decision to the view that officers may have expressed at pre-application stage and in the recommendation they made to Planning Board as it had reasonable planning grounds for doing so.
24. Unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process has therefore not been clearly demonstrated in this respect.

Recommendation

25. It is recommended that the application for an award of costs be refused.

Geoff Underwood

INSPECTOR