



Costs Decision

Hearing Held on 29 July 2020

Site visit made on 30 July 2020

by Simon Hand MA

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

Decision date: 10 August 2020

Costs application in relation to Appeal Ref: APP/Y3940/W/19/3234719 & 3234724

191 Devizes Road, Salisbury, SP2 7LS

- 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 Nest Homes for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission and listed building consent for demolition of existing disused house and demolition of existing covered reservoir and construction of five houses, and the conversion of the existing pumphouse to a pair of dwellings.
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Decision

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

The submissions for Nest Homes

2. The LPA failed to give proper consideration to the appellant's evidence. The only matter of substance between the parties was the retention of the reservoir. The appellant provided a detailed viability study that demonstrated the reservoir could not viably be converted. This was not challenged by the LPA who instead insisted that other uses or a different residential conversion should be considered. They also insisted that the site should be marketed to test these various ideas, despite there being no policy requirement in the local plan for such a marketing exercise or in the NPPF and provided an example of a conversion to a reservoir in Barnstable that was completely different to the appeal site.
3. The Council also failed to provide any evidence from a conservation witness at the hearing despite the matters at dispute relating solely to the heritage asset.

The response by Wiltshire Council

4. The Council relies on the NPPF and development plan. Given that great weight should be assigned to any harm to a heritage asset the appellant failed to exhaust the possibilities for converting the reservoir. English Heritage considered the demolition would result in a "substantial loss of significance to the heritage asset". Paragraph 196 of the NPPF requires that where there is less than substantial harm a balancing act should be carried out including "where appropriate, securing its optimum viable use". This was not considered by the appellant.

5. The Barnstable reservoir was merely an example of how an imaginative conversion could work, not a suggestion for this site. The appellant's agent also pointed out the terrace of 3 houses should not be considered as part of the enabling development as it could go ahead anyway. Finally the conservation officer was not able to attend for personal reasons and no other conservation officer was considered necessary as the conservation arguments had all been clearly aired.

Reasons

6. I think it was clear the Council did not challenge the viability evidence; their argument was that it did not go far enough. It is also clear the Council are not attempting to resile from their view that the harm was less than substantial in terms of the NPPF balance to be made. However given the English Heritage had stated the loss of the reservoir would cause substantial harm, it was not unreasonable for the Council to continue to pursue English heritage's suggestion that extensive solutions should be explored to incorporate the reservoir into a scheme either residentially or for some low intensity ancillary use.
7. I agree that the viability evidence was not comprehensive and it was not unreasonable for the Council to provide other imaginative ideas for residential conversion. Indeed they would be more at fault if they failed to do so, given that the lack of imagination was an important part of their case. A detailed rebuttal of the Barnstable scheme was not provided until the Hearing. Nor do I think the suggestion of a marketing exercise is entirely inappropriate. One cannot be required without policy backing, but that does not mean that it is unacceptable to suggest one.
8. In the event, I disagreed with the amount of harm caused, partially because I was more convinced by the viability statement than the Council were, but that did not mean the alternative was not arguable. It was also not clear to me, until the Hearing, that the terrace of 3 houses were a full part of the scheme. The appellants had made much of the fact they should not be considered, which not only made the viability figures quite different, but also affected the overall balancing act when considering the streetscene.
9. The Council explained about the conservation officer, and I agree there were no technical conservation arguments in dispute so lack of attendance by a conservation officer was not unreasonable.
10. While I have some sympathy with the appellant, who did seem to have thought through many of the aspect of the scheme, the loss of the reservoir, particularly where the relationship to the pumping house is a rare one, should not be considered lightly. Although in the end I agreed with appellant I do not think the Council's opposition was so unreasonable that an award of costs would be justified.

Simon Hand

Inspector