
Costs Decision

Site visit made on 21 July 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

**Costs application in relation to Appeal Ref: APP/X0360/W/19/3243042
Plot 7, The Coombes, Coombes Lane, Barkham, Wokingham, Berkshire
RG41 4SJ**

- 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 Mr Jeb Cooper for a full award of costs against Wokingham Borough Council.
 - The appeal was against the refusal of planning permission for Planning application QWCJC01 for essential post & rail paddock fencing (formerly permitted development)
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Decision

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

Reasons

2. 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. Such examples include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate the reason for refusal on appeal; and vague and generalised or inaccurate assertions about a proposal impact which are unsupported by an objective analysis.
3. The applicants cost application indicates that they consider unreasonable behaviour of the LPA caused an unnecessary appeal, and additional work arising from this. The matters raised by the applicant include that the proposed development would otherwise be permitted development, and thus cannot reasonably be described as unacceptable in principle. Furthermore, the applicant has indicated that the Council had no reasonable basis that the proposed development would harm the wider character and landscape in an area where such development can be seen to exist already; and that suggesting that a development is unacceptable because it has not provided information regarding harm to wider interest effectively invents reasons for refusal where none exist.
4. Turning to the first point and the principle of the development in this location, as outlined within my decision notice the Council made a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015, as amended, which came into force on 23 January 2019. This included the appeal site. This restricts certain permitted development rights, including

the erection of gates and fences. Whilst the fencing as proposed could normally be considered permitted development, this is not the case with this appeal site. In this respect, the fact that the Council has found the principle of the development as unacceptable is not unreasonable. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, planning decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.

5. The officer's report assesses the impact of the proposal on the character and appearance of the area, and within this assessment reference is made to the Wokingham District Landscape Character Assessment. Whilst I have reached a different conclusion to the Council in respect of the impact of the proposal on the character and appearance of the area, I am satisfied that the relevant policies have been considered and that the officer's planning judgement was exercised in reaching their conclusions. In this instance I find that the Council's reasoning within the officer's report in relation to the impact on the character and appearance of the area has been adequately substantiated.
6. As can be seen from my appeal decision, I agree with the Council that the proposal did not contain sufficient information with regard to the effect of the proposal on protected trees and protected species. Without adequate information in order to confirm that no harm exists, the Council has not acted unreasonably in refusing planning permission on these grounds. Whilst I appreciate the appellant is of the view that both the impact on protected trees and species could be dealt with via planning conditions, as I have explained in my decision this is not the case.
7. Whilst I note that the applicant may be aggrieved that the Council did not highlight the need for additional information and assessment during their determination of the planning application, it is clear from the Council's statement that no pre-application discussion took place prior to the submission of the planning application. Such discussions could have provided an opportunity to deal with any concerns regarding the likely impact on the proposal on protected trees and ecology, in a pro-active manner. In any event, the onus is on the appellant to provide adequate information in order to allow the Council to determine the application.
8. I note that the applicant has raised concerns that the Council has introduced additional evidence during the appeal process which was out of time. This relates to the Arborfield and Barkham Neighbourhood Plan (NP) which was made after the Council issued its decision notice, and that the appeal site has been added to Natural England's Ancient Woodland Inventory (AWI). As per the Procedural Guide Planning Appeals – England, the Council must alert the Inspector if it becomes aware at any stage before the appeal is issued of any material change in circumstance which have occurred since it determined the application that is directly relevant to the appeal. In this case both the making of the NP and the inclusion of the site in the AWI are a material change in circumstance. The main parties were afforded the opportunity to comment on this, and therefore the Council drawing my attention to these items cannot be considered unreasonable.
9. Accordingly, I do not consider that the Council failed to properly evaluate the application, and therefore the appeal could not have been avoided. I have

found that the Council had reasonable concerns about the impact of the proposed development which justified its decision.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated, and an award of costs is not justified.

S Shapland

INSPECTOR