



Costs Decision

Site visit made on 13 October 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2020

Costs application in relation to Appeal Ref: APP/Y3940/W/20/3255756 Land at The Clay, Easterton, Devizes, Wiltshire SN10 4PB

- 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 Messrs P and P Ford for a partial award of costs against Wiltshire Council.
 - The appeal was against the refusal of outline planning permission for the erection of 4 no. self/custom build dwellings and associated works.
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Decision

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

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicants consider that the Council behaved unreasonably in failing to identify and assess the particular significance of the Easterton Conservation Area (CA) as required by paragraph 190 of the National Planning Policy Framework (the Framework). Furthermore, the Council erroneously relied upon an extract of the Easterton Conservation Area Statement (ECAS) which referred to an element of the CA which is unrelated to the appeal site. The Council were also mistaken in referring to a valued landscape within the meaning of paragraph 170 a) of the Framework. As a result, the applicants prepared additional heritage and landscape information as part of their appeal case. A partial claim is sought in relation to these costs.
4. The PPG further advises that local planning authorities are at risk of an award of costs if they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The reasons for refusal set out in the decision notice are reasonably specific and relevant to the application and each one identifies which policies in the development plan the Council considered to be most relevant, including that relating to the impact on the setting of the CA. These reasons were adequately substantiated by the Council in its delegated officer report that identified the characteristics of the site and outlined the nature of the harm resulting to the setting of the CA. Furthermore, this is elaborated on in paragraph 2.24 of the Council's planning statement. Overall, the evidence does not demonstrate that

the Council failed to identify the significance of the CA and the information provided is sufficiently detailed and specific to substantiate their case.

6. The case officer report does refer to a section of the ECAS which states *'Meadows extend down to the street on the south side except for a wooded area of native plants and several conifers. This area emphasises the rural setting of the village and contributes to the character of the Conservation Area'*. The applicants assert that this refers to land that does not include the appeal site. Nevertheless, the wording of the document and the use of the plural term "meadows" in particular, gives some latitude for interpretation. Neither did the reference to the extract form the entirety of their case in relation to the impact on the CA. Accordingly, it was not unreasonable for the Council to refer to it, nor the appeal decision¹ close by, to explain the context for their concerns. Therefore, I am not persuaded that the Council's reference to it amounted to unreasonable behaviour as described in the PPG.
7. Whether the appeal site constitutes a valued landscape within the meaning of 170 a) of the Framework was a matter of dispute between the parties. As will be seen from my decision, the Framework does not provide a definition of 'valued landscape'. Furthermore, notwithstanding the reference to an appeal decision, I am not aware that the meaning of paragraph 170 a) has been firmly established in case law such that alternative interpretations are ruled out. It follows that it was reasonable for the Council to make their case in this regard. Although, ultimately, I did not agree with their position on this point, the Council provided evidence as part of their planning statement². This amounted to more than a reliance on the extract of the ECAS referred to above and was neither vague nor generalised. Hence, they did not act unreasonably.
8. As a result, on the basis of the evidence presented I cannot agree that the Council's behaviour in respect of these matters amounted to making vague, generalised or inaccurate assertions about the proposal's impact. It therefore follows, that the applicants were not put to unnecessary or wasted expense in testing the matter at appeal.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Helen O'Connor

Inspector

¹ Reference APP/Y3940/W/19/3234856, Appendix 4, Appellants' Statement of Case

² Paragraphs 2.13-2.17 and Appendices 3 & 4 of Council's Planning Statement