The Planning Inspectorate

Costs Decisions

Hearing Held on 16 October 2020

Site visit made on 19 October 2020

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Costs application 1 in relation to Appeal Ref: APP/W9500/W/20/3246365 Land at Spaunton Quarry, Kirkbymoorside YO6 6NF

- 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 George Winn Darley for a full award of costs against North York Moors National Park.
- The hearing was in connection with an appeal against the refusal of planning permission for change of use of two of the existing buildings which were formerly used in connection with mineral extraction at the site to agricultural use along with the construction of an extension to one of the buildings.

Costs application 2 in relation to Appeal Ref: APP/W9500/W/20/3243322 Land at Spaunton Quarry, Kirkbymoorside YO6 6NF

- 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 George Winn Darley for a full award of costs against North York Moors National Park.
- The hearing was in connection with an appeal against the refusal of planning permission for use of part of the former quarry for leisure purposes.

Costs application 3 in relation to Appeal Ref: APP/W9500/W/20/3246365 Land at Spaunton Quarry, Kirkbymoorside YO6 6NF

- 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 Jonathan Allison (CL162 Appleton Spaunton Common Protection Association) for a full award of costs against North York Moors National Park.
- The hearing was in connection with an appeal against the refusal of planning permission for change of use of two of the existing buildings which were formerly used in connection with mineral extraction at the site to agricultural use along with the construction of an extension to one of the buildings.

Costs application 4 in relation to Appeal Ref: APP/W9500/W/20/3243322 Land at Spaunton Quarry, Kirkbymoorside YO6 6NF

- 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 Jonathan Allison (CL162 Appleton Spaunton Common Protection Association) for a full award of costs against North York Moors National Park.
- The hearing was in connection with an appeal against the refusal of planning permission for use of part of the former quarry for leisure purposes

Decisions

1. All of the applications for costs are refused.

Reasons

2. Applications 1 and 2 were made in writing by the appellant prior to the Hearing. Application 1 was responded to in writing by the NPA and Application 2 was responded to orally at the Hearing. Mr Allison's applications were made orally at the Hearing and responded to orally by the NPA. It was not explicit that an application was being made in respect of each appeal, but I have treated it as such given the arguments made by Mr Allison applied generally to both appeals.

3. 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. An application may be made on procedural grounds, relating to the appeal process, or substantive grounds relating to the planning merits of the appeal.

The applications by Mr George Winn Darley

Application 1

4. The appellant claims that the NPA failed to substantiate its reason for refusal as it did not consider the appellant's comprehensive landscape and visual impact assessment (LVIA), no comments were sought from a landscape officer and no substantive assessment made of the impact of the proposal on the landscape. It is further claimed that the NPA ignored the appellant's statements that there would be no need for a farm worker's dwelling and made unsubstantiated claims that the development would lead to pressure for a farm worker's dwelling.

5. The NPA in response clarified that it does not employ a landscape officer but that its planning officers are trained to consider landscape impacts, given it is a primary consideration in planning proposals reflecting the statutory purposes of the National Park. The NPA adds that the weight attributed to the appellant's LVIA was lessened as it applied the existing condition of the site as a baseline, rather than comparing the site without buildings as per the Landscape Restoration Plan, and it failed to acknowledge the common land as a historic landscape. In respect of the second matter, the NPA maintains that it was reasonable for it to question the acceptability of a dwelling some 300 metres away as it is not within 'sight and sound' of the agricultural buildings, which can be accessed without passing the dwelling.

6. On my reading of the evidence, I am satisfied that the NPA did have regard to the appellant's LVIA in reaching its decision. The lack of direct rebuttal to the LVIA or use of a specific consultee is not evidence in itself of a failure to substantiate the reason for refusal. The NPA's delegated report refers to the longstanding aims to restore the quarry to a more natural landform, which it found the proposal would contrast with. Reference is made to Core Policy A and 12 of the NYM Core Strategy (as were in force at the time) which sought to deliver Park purposes and to direct acceptable development to appropriate locations, and set out that the National Park is not characterised by remote field barns, but that agricultural buildings are clustered with their respective

farm houses. In my judgement, the Council has substantiated its reason for refusal and I make no finding of unreasonable behaviour in this respect.

7. In terms of the need for an agricultural worker's dwelling, the NPA's concerns were generalised, seemingly drawing on its experiences in other cases in the National Park. Ultimately, no firm evidence was advanced by the NPA to demonstrate that a dwelling was a likelihood to follow the agricultural buildings. The Council's persistence in defending this reason for refusal was therefore unreasonable.

8. However, to award costs, there must be evidence of wasted expense. In this case, the appellant was not required to produce further evidence, but simply confirmed no dwelling was sought and pointed to evidence already produced by its consultant in respect of the agricultural need generally. At the Hearing, there was little by way of detailed evidence advanced and the appellant was able to deal with points raised orally. Therefore, despite the Council pursuing this reason for refusal unreasonably, it has not resulted in demonstrable wasted expense for the appellant and an award of costs is not justified.

Application 2

9. The first claim is that the NPA's committee report was misleading by using the wrong photograph and site plan, and by failing to recognise that the amenity building was to be re-clad in new materials, and not simply retained as it exists. As with Application 1, the appellant claims the NPA failed to consider the LVIA. The appellant also claims that the NPA relied incorrectly on Policy 8 of the NYM Core Strategy, which was not related to tourism development, instead of Policy 14, which supported use of existing buildings for tourism development.

10. The NPA states that the photo in the committee report was intended to be illustrative of the wider site, and other photos were shown to the Committee during the presentation. The revisions to the site plan were also clarified to Members at the committee meeting. The NPA states that its objections were to the principle of the building being retained, and different re-cladding options put forward did not have a bearing on this. It adds that support under Policy 8 was predicated on the existing building being lawful, which the NPA asserts it was not and is subject to enforcement action. As a result, it treated the proposal as being for a new building, to which Policy 14 was applicable.

11. I have no evidence to dispute the NPA that matters relating to the photo and site plan were clarified during the committee meeting, as it is common for officers to show photos and describe plans to assist Members.

12. With respect to the Policies, both Policy 8 and Policy 14 are listed on the decision notice, and both appear to me to have been relevant to the proposals, at least in part. Moreover, the NPA acknowledged that Policy 14 supported re-use of existing buildings, but found in the overall assessment that the proposal would cause harm to the landscape character, and in turn the special qualities of the National Park, in conflict with Part 1 of Policy 14. I find no unreasonable behaviour in this respect. Moreover, the NPA's committee report included consideration of the building with the proposed external alterations, and I see nothing unreasonable in the NPA's refusal to countenance alternative proposals belatedly in the application process, which in any event were merely indicative sketches and not fully worked up plans.

13. As with Application 1, I find no unreasonable behaviour in respect of the alleged failure of the NPA to consider the LVIA, given the delegated report refers to the longstanding aims to restore the quarry to a more natural landform, which it found the proposed amenity building would contrast with. This was done with reference to relevant development plan policies, and I have agreed with the NPA in my appeal decision.

14. For these reasons, I conclude that the NPA has not exhibited unreasonable behaviour and the applicant has not been put to unnecessary or wasted expense at the appeal stage. No award of costs is therefore made in respect of Application 2.

The applications by Mr Jonathan Allison (CL162 Appleton Spaunton Common Protection Association) (Applications 3 and 4)

15. Applications 3 and 4 were made at the Hearing by Mr Allison representing the CL162 Association. The basis of the claims is that the NPA, in granting of planning permission for a development of five holiday cabins in 2007, and subsequently in discussions with the appellant about other proposals, has ignored the 2006 Commons Act and the 2015 Common Land Consent Policy by DEFRA. In short, Mr Allison argues that the NPA should not have approved the application in 2007 and it has led to the expenditure of time by members of the CL 162 Association in seeking to enforce the completion of the 2003 Landscape Restoration Plan.

16. The NPA in response states that Mr Allison confuses the interaction between the common land regime and the planning system, and that the Commons Act does not interfere with the ability to grant planning permission, as the applicant would need both permissions in place to implement the development. The NPA argues it was open to it to grant permission and it was not improper to do so.

17. The PPG is clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. Whilst the thrust of Mr Allison's dissatisfaction with the NPA is evident from his submissions to the Hearing, the claims made refer to a separate planning application from 2007 for which I do not have full particulars of the evidence before the NPA or its considerations in granting permission.

18. In respect of the applications now at appeal, the NPA makes clear reference in its delegated reports to the common land designation being a material consideration, and highlights Mr Allison's objection letter in its statement as a pertinent source of information in this respect. Even if the NPA did not take the common land issue into account in 2007, that was a separate application and would not justify an award of costs in respect of the current appeals.

19. As I indicate in my main appeal decisions, the Common Land regime is separate to the planning regime, and proposals falling under both need not necessarily be determined simultaneously, nor is approval of one predicated on the other being approved. I therefore find no unreasonable behaviour by the NPA in these respects.

20. Moreover, for costs to be awarded, there must also be evidence of wasted expense. The time spent by members over the years appears to be primarily to comment on planning applications submitted by the landowner. However, the landowner is entitled to make applications and have them determined, much as the CL162 Association is entitled to comment on them, and it does not equate to wasted expense simply because the landowner exercises their right to apply for planning permission one or more times.

21. Accordingly, I find in both Applications 3 and 4 that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that an award of costs is not justified in either case.

Conclusion

22. For the reasons given, I conclude that an award of costs in not justified in respect of any of the applications, and all are therefore refused.

K Savage

INSPECTOR