
Costs Decision

Hearing Held on 12 January 2021

Site visit made on 13 January 2021

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Costs application in relation to Appeal Ref: APP/Q9495/W/20/3254342 Land at Meadowcroft, Storrs Park, Windermere LA23 3JG

- 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 E Clark of Hillcrest Developments North West Ltd for a full award of costs against Lake District National Park Authority.
 - The appeal was against the refusal of outline planning permission for 4no. detached 2 storey dwellings with vehicle access from Meadowcroft.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for the applicant

2. The applicant considers that the National Park Authority ('the Authority') have behaved unreasonably in terms of procedural and substantive matters. The applicant contends that a procedural award is warranted against the Authority on the basis that part of the first reason for refusing planning permission has been withdrawn on appeal. The application made about behavioural matters relates to: 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 each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusal of planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead; and not determining similar cases in a consistent manner.

The response by the Lake District National Park Authority

3. The Authority submitted their written response ahead of the Hearing to which I have had regard to in reaching my decision. No other submissions were made by the Authority at the Hearing.

The response for the applicant

4. The applicant made further oral submissions at the Hearing. They said that on page 7 at paragraph 3.4 through to paragraph 3.5, the observation is made that the Authority have not substantiated their reason for refusal in relation to the impacts on character and appearance. That remains the case following the

Hearing when after repeated questions from you sir I recorded on three separate occasions you asked the Authority how the development leads to harm and there was no analysis whatsoever provided. It reasons a bare assertion and not objective evidence.

5. Jumping to paragraphs 3.8 to 3.10 which deal with open space, we now know from the Hearing that the Authority have abandoned this part. It ought not to have been raised. At paragraph 3.12 sir I see that the objection on flooding can be dealt with by condition and seemingly the condition proposed today does resolve any residual issues. If you are not satisfied with the applicant as a full application it is open to you to give a partial award based on the aspects of the case that have been withdrawn. Sir, unless I can assist further those are my submissions.

Reasons

6. The Planning Practice Guidance (the Guidance) 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. In order to be successful, an application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Parties in the appeal process are normally expected to meet their own expenses.
7. In refusing planning permission, the Authority determined that the appeal site fell outside a Cluster Community for the purposes of Policy CS02. While the applicant held a different view to the Authority and provided substantive evidence to support his stance, the Authority was entitled to make a judgement on this. Nevertheless, the Authority's stance changed at appeal, leading to this aspect of its case being conceded. This was not brought about by a shift in the applicant's evidence but instead by a decision taken by the Authority on a nearby site at Ellerwood¹ in which the Authority considered Storrs to be a Cluster Community. To run a counter argument to that stance now would be illogical and inconsistent, and the applicant has as a result of the Authority's actions, incurred wasted expense in pursuing this aspect of the case at appeal prior to the Authority confirming their revised position.
8. The Authority maintained that the appeal site was not a domestic garden. However, their judgement was not backed up by substantive evidence on appeal insofar as the function of the land. Furthermore, during questioning at the Hearing, the NPA accepted that a domestic garden could take many different forms of appearance, noting that the site has moved away from a manicured appearance. Although the Authority suggested that a lawful development certificate could be made to establish the lawful use of the site, the Authority did not grapple with the task of demonstrating their case at appeal relating to the appearance of the land in the context of whether or not the land was domestic garden for the purposes of Policy CS02.
9. Through questioning at the Hearing, the Authority accepted that the site did not accord with either definition of 'open space' set out in the Town and Country Planning Act or the National Planning Policy Framework. The Authority accepted that the use of the term 'open space' within its reason for refusing planning permission was not correct in the context of these definitions. As

¹ Ref: 7/2020/5559

such, the applicant has needed to pursue this part of the appeal in the context of the Authority's unreasonable behaviour.

10. The characteristics of the appeal site and its surroundings in the context of the eastern shore of Lake Windermere, and how this area contributes to the Outstanding Universal Value (OUL) of the English Lake District World Heritage Site (WHS) were agreed between the applicant and the Authority. The Authority accepted the analysis provided in the Landscape Visual Impact Assessment relating to views from beyond those adjacent to the appeal site on Meadowcroft Lane and Christmas Lane. The Authority also recognised the presence of residential development nearby and its mixed type and style. However, despite finding harm and weighing the public benefits of the scheme against this, the Authority did not substantiate its case about the proposal's effect on the area and how the proposal could or would lead to harm to the WHS and its OUL with objective analysis beyond vague or generalised assertions about the introduction of development in a parkland setting.
11. The second reason for refusing planning permission related to flood risk. On this point, the Authority held a different view to that of the Lead Local Flood Authority who accepted that the submitted Flood Risk Assessment and Drainage Strategy ('the Strategy') was adequate, subject to a planning condition. It was fair for the Authority to determine this and it explained that it had not been demonstrated that the development would not be at risk of increasing flood risk elsewhere.
12. The focus for this related to the 'cuts' to the site's eastern boundary. Despite the active civil case, works to infill the cuts were included in the applicant's Strategy and there is a legitimate concern linked to the development plan which the proposal needed to satisfy. The wider implications of these works were not assessed by the Strategy; a point accepted by the applicant at the Hearing. This position was identifiable from the Officer Report. Although it may not have been the applicant's case, no steps were taken to address or engage with the Authority's concern with their appeal submissions.
13. Legal Opinion provided by the applicant ahead of the Hearing indicated that a Grampian condition could resolve the matter. The Authority could have acted by considering the imposition of such a condition when determining the planning application. However, I am satisfied that their stance, on balance, was a reasonable one to take given the issues encountered locally and the uncertainties highlighted by the Authority.
14. The Authority could have also subsequently set out the wording for such a condition before the Hearing based on the Opinion submitted. However, equally it was within the applicant's gift to do so, and in a timely manner, especially as I had asked both parties to work on suggested planning conditions as part of my Pre-Hearing Note.
15. A planning condition to ensure the implementation of the Strategy was suggested by the Authority. Although the Authority were concerned about the applicant's ability to use neighbouring land for this, the suggested condition would have allowed development to proceed as the surface water drainage works would have needed to be implemented before first use or occupation. However, this condition does not address the lack of assessment in respect of the effect elsewhere.

16. The applicant provided the wording of a Grampian condition as part of the Hearing and while the Authority could have been more pro-active, it did not result in unnecessary or wasted expense as its concerns, which are linked to policy requirements, were clear enough throughout. Therefore, I consider that the applicant has simply borne their own costs on this matter that they would be normally expected to meet in the appeal process.

Conclusion

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Lake District National Park Authority shall pay to by Mr E Clark of Hillcrest Developments North West Ltd, the partial costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicants are now invited to submit to Lake District National Park Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR