
Costs Decision

Site visit made on 8 March 2021

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 25 March 2021

Costs application in relation to Appeal Ref: APP/M1710/W/20/3260082 Janda, The Drove, Lower Wield, Alresford SO24 9RX

- 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 Earlsgate Limited for a full award of costs against East Hampshire District Council.
 - The appeal was against the refusal of planning permission for the erection of new dwelling of exceptional quality (NPPF Paragraph 79e) creation of wildlife pond, associated landscaping and demolition of existing building.
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Decision

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

Reasons

2. The Planning Practice 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 application for a full award of costs was made in writing. The applicant submits that the Council has acted unreasonably by refusing planning permission that should clearly be permitted having regard to the relevant considerations and has sought to rely upon vague, generalised and inaccurate assertions about the appeal scheme. The Council's response was made in writing confirming the principle challenge.
4. In regard to the relevant considerations, the PPG¹ makes clear that these relate to having regard to the proposal's accordance with the development plan, national policy and any other material considerations. The reasons why the Council refused the appeal application are clearly set out in its decision notice, which is complete, precise, specific and relevant to the application. It also clearly sets out the policies of the East Hampshire District Local Plan: Second Review 2006 (LP) and the East Hampshire District Local Plan: Joint Core Strategy 2014, and the sections of the National Planning Policy Framework (the Framework), that the proposal would be in conflict with and the reasons for the conflict have been adequately substantiated by the Council in its officer report.
5. I do not accept that the Council asserted that the conclusions of the design review panel have 'no bearing' on the acceptability, or otherwise, of the appeal scheme.

¹ Paragraph: 049 Reference ID: 16-049-20140306

6. The officer report states that *'the experience and credentials of the architect and consultants are well emphasised as is their standing within their respective professions and that of the private Design Review Panel the applicant engaged to assess and critique the proposed scheme. This however, has no bearing on whether a scheme would be acceptable when assessed against the NPPF or Development Plan policies'*.
7. On my reading, it is not the conclusions of the design review panel per se that the Council consider have no bearing on the assessment of the appeal scheme, rather the experience and credentials of the architect and consultants that formed the panel. In other words, no matter the experience and credentials of the members of the panel, which the Council readily acknowledge to be well emphasised as is their standing within their respective professions, this alone has no bearing on the acceptability, or otherwise, of the appeal scheme.
8. In any event, paragraph 129 of the Framework states that in assessing applications, local planning authorities should have regard to any recommendations made by design review panels. Although the Council, for whatever reason, did not attend and observe the design review panel, it seems to me that it did take into account the conclusions of the panel because it accepted that, in regard to the design of the house in itself, it has architectural merit and would be of a high quality and that its external finish would utilise materials representative of the local vernacular. It will be seen from my decision that I agree with the applicant and the Council that the design of the dwelling in itself should be considered as exceptionally good.
9. Whilst it states that the appeal site *'forms a part of the Downland Mosaic landscape character area the and within a sub-category 3D Lasham, all of which is part of the wider Hampshire Downlands Landscape Type'* it is acknowledged that officer report does not expressly refer to the principles in the Council's Landscape Character Assessment. Nevertheless, the Council correctly considered the landscape character issue in the context of the defining characteristics of the site and surrounding area and concluded that the development would cause *'harm to the character and appearance of the site and wider landscape'*. Moreover, the Council concluded that the proposed development *'would introduce a new dwelling with a substantial built form within the site to the detriment of the character of the sensitive surrounding landscape and the immediate setting...'*. In this context, the Council considered that the proposal would not meet the criteria contained within paragraph 79 (clause 'e') of the Framework. Despite the failure to include specific reference to the principles in the Council's Landscape Character Assessment to get to the aforementioned conclusions, this does not amount to unreasonable behaviour.
10. Turning to the Council's comments about the location of the proposed new house in relation to the topography of the site, the domestication of the eastern meadow, the resources available to the applicant, the price of the resultant dwelling and the comparisons of the proposal to the Wield Park scheme. Whilst, to some extent, the Council's comments, some of which it is acknowledged are not wholly accurate, have resulted in some additional effort on the part of the applicant, in reality the applicant's case in regard to the main issues has not changed significantly during the appeal process. I am not persuaded that the applicant has provided me with a compelling argument to

demonstrate that any additional expenses incurred as a result of the Council's comments on these matters has been anything more than *de minimis*.

11. It will be seen from my decision that I consider saved Policy H16 of the LP to be broadly consistent with the Framework which seeks to maintain a choice of housing. As such, in the context of paragraph 213 of the Framework, saved Policy H16 is not out-of-date and hence full weight should be attributed to the proposal's conflict with it in this case. The Council's officer report clearly explains the reasons why the proposal, taking into account that the appeal site is located within the countryside, outside a Settlement Policy Boundary, is contrary to saved Policy H16. In the context of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the Council were correct to consider the application in line with the adopted development plan, which includes the LP, unless material considerations indicate otherwise.
12. As a result, for the above reasons, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

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

Andrew Bremford

INSPECTOR