



Costs Decision

Site visit made on 23 March 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Costs application in relation to Appeal Ref: APP/H1840/W/20/3259338 Orchard Dene Hall, Broad Marston Road, Broad Marston, Pebworth CV37 8XY

- 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 and Mrs Lambrecht for a full award of costs against Wychavon District Council.
 - The appeal was against the refusal of planning permission for change of use of existing outbuilding to tourist accommodation and for owners recreational purposes without complying with a condition attached to planning permission Ref W/07/02211/CU dated 8 January 2008.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities which includes preventing or delaying development which should clearly be permitted and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellant contends that the Council has acted unreasonably by preventing a development which should have been permitted; failure to substantiate the reasons for refusal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and not determining similar cases in a consistent manner.
5. The appellant has referred to an application at the former Telephone Exchange granted planning permission nearby. Every appeal must be considered on its own merits and based on the information before me there is no compelling evidence to clearly indicate that the Council has been inconsistent in its decision-making process.
6. I acknowledge that CrashMap data is limited as damage only accidents are not recorded on the database. However, in my judgement it is a reasonable

benchmark to consider highway safety against. In this case the absence of reported accidents indicates a reasonable safety record at the junction, particularly as there is no credible evidence to suggest otherwise.

7. I acknowledge that visibility at the access does not meet the Sight Stopping Distance (SSD) set out in Manual for Streets (MfS). However, MfS is technical guidance and not adopted planning policy. Moreover, it clearly states that in preparation of the document no relationship between SSDs and casualties was found. As such, treating the SSD as a non-subjective factor or a definitive standard for determining that the proposal unduly affects highway safety is flawed and leads to somewhat of a simplified, generalised and inaccurate assertion that the proposal results in highway harm. In my view, this amounts to unreasonable behaviour.
8. Whilst I acknowledge that officer's have been largely led by advice provided by the County Highways Authority the Council have failed to provide credible evidence to demonstrate that the access is unsafe. In addition, no regard has been given to the absence of reported accidents at or near the access including whilst the tourist accommodation has been operating.
9. Despite the Council considering the condition against the guidance in the National Planning Policy Framework and the Planning Practice Guidance in the planning judgement, it appears to me that having regard to the provisions of national planning policy and other material considerations, the proposal should reasonably have been permitted. The refusal of planning permission, in the absence of any justifiable evidence and by advancing vague and generalised assertions about the proposal's impact amounted to unreasonable behaviour and resulted in the applicant incurring unnecessary expense in making this appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified

Costs Order

11. 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 Wychavon District Council shall pay to Mr and Mrs R Lambrecht, the 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.
12. The applicant is now invited to submit to Wychavon Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B Thandi

INSPECTOR