



Costs Decisions

Site visit made on 11 June 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2021

Cost Application A:

**Costs application in relation to Appeal Ref: APP/W0340/W/20/3265892
Hayward Green Farm, Watery Lane, West Woodhay, Newbury RG20 0BJ**

- 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 Charles Brown for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of planning permission for the retention of existing access for a temporary period of 2 years.
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Cost Application B:

**Costs application in relation to Appeal Ref: APP/W0340/W/20/3265904
Hayward Green Farm, Watery Lane, West Woodhay, Newbury RG20 0BJ**

- 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 Charles Brown for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of planning permission for alterations to the external elevations of eastern pavilion.
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Decision

1. In respect of Costs Application A, the application for an award of costs is refused.
2. In respect of Costs Application B, the application for an award of costs is refused.

Background

3. The Planning Practice Guidance (the 'PPG') advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The applicant submits that the Council has acted unreasonably on three grounds. The first ground for costs is made on the basis that the Council has acted unreasonably in respect of both applications by preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. The second ground for costs is made on the basis that the Council has failed to produce evidence to substantiate each reason for refusal in respect of both appeals.

6. The third ground for costs is made on the basis that the Council has made vague, generalised and inaccurate assertions about the impact of the respective proposals, which is unsupported by any objective analysis.

Reasons

7. In determining the Appeal Ref: APP/W0340/W/20/3265892, I agreed with the Council's assessment and found that the retention of the existing access and driveway would cause significant harm to the character and appearance of the area, which would neither conserve or enhance the landscape and scenic beauty of the North Wessex Downs Area of Outstanding Natural Beauty (the 'AONB'). Therefore, I cannot agree that the Council has relied upon vague, generalised or inaccurate assertions and failed to properly substantiate their concerns with objective analysis in respect of the main issue.
8. In determining the Appeal Ref: APP/W0340/W/20/3265904, in respect of the first main issue, I found that the proposal would have an acceptable effect upon the character and appearance of the area. In addition, I found that the proposed changes to the design and appearance of the East Pavilion building would have a neutral impact upon and thus would conserve the natural beauty of the North Wessex Downs AONB.
9. I recognise that my findings on the first main issue were different to the Council's assessment. Nevertheless, for the reasons set out below, I am satisfied that the Council's reason for refusal was substantiated by an objective analysis.
10. In respect of this matter, I note that the applicant criticises the Council's assessment of the proposed changes to the East Pavilion and cites several areas of disagreement. However, these points relate to matters of planning judgement, where the Council are entitled to take a different view to that of the applicant.
11. In respect of the second main issue of Appeal Ref: APP/W0340/W/20/3265904, I was unable to conclude that the development would preserve the sense of remoteness, tranquillity and dark night skies of the North Wessex Downs AONB. Given that the Council expressed similar concerns, I cannot agree that they relied upon vague, generalised or inaccurate assertions and failed to properly substantiate their concerns with objective analysis in respect of the main issue.
12. Accordingly, in respect of both appeals, I cannot agree that the Council acted unreasonably by 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.
13. The applicant has criticised the Council's approach in preparing a single statement of case, which sets out the Council's position in respect of both appeals. It is unclear why this approach constitutes unreasonable behaviour when it is common practice for the Planning Inspectorate to link casework when multiple appeals have been submitted concerning development at the same site.
14. Indeed, the applicant's agent advocates such an approach within their statement of case for Appeal Ref: APP/W0340/W/20/3265892, where they state "it would in our view be sensible to co-join the two appeals and to deal

with both appeals by way of a roundtable discussion in a Hearing format rather than via written representations. It is anticipated that a Hearing would last no more than 1 day, including a site visit". Whilst the respective cases were determined via written representations, they were linked, as per the agent's suggestion.

15. The applicant's costs application alleges that the Council failed to seek the views of the AONB Management Board or the Council's Landscape Officer before reaching the conclusion that the respective proposals would result in harm to the character and appearance of the area, including the North Wessex Downs AONB. In addition, he argues that the Council's statement of case does not address all of the reasons for refusal or the policy conflicts set out in each decision notice. As such, he contends that the Council acted unreasonably by failing to provide evidence to substantiate each reason for refusal.
16. However, the Council explain that they consulted with the AONB Management Board in respect of both applications, but no comments were returned. In their final comments, the applicant accepts that the Council undertook consultation and he argues *"the fact that the AONB Board did not return comments on either planning application firmly suggests that the Board did not have any concerns or objections to the proposals as described, particularly given that the Board has historically taken an interest in matters relating to the Site"*.
17. I am not aware of the consultation comments made by the AONB Management Board in respect of other applications at the site. However, in my experience it is not uncommon for consultees to not comment upon minor proposals. In such circumstances, it falls to the decision maker to undertake their own assessment.
18. The Council explain that they do not have a Landscape Officer. Consequently, Officers will use their own planning judgement when assessing landscape impact. In this instance, I am satisfied that the Council objectively assessed the landscape impact of both proposals and properly substantiated each reason for refusal. For instance, the Council had regard to the West Berkshire Landscape Character Assessment: August 2019, which formed an important material consideration in the case.
19. In terms of the Council's statement, it makes clear the document does not seek to duplicate the Application Report, but focuses on responding to the Appellant's Statement of Case, and supplementing the respective officer reports, as appropriate.
20. This approach is consistent with advice contained within Appendix J of the Planning Inspectorate's Procedural Guide: Planning appeals – England (March 2021) which states "The local planning authority's full statement of case should be a succinct statement supporting the reasons for opposing the development. It should be concise and highlight where there are differences between the evidence supplied by the appellant in their full statement of case and the arguments being put forward by the local planning authority". Amongst other things, Appendix J.3.2 states that "the local planning authority's full statement of case should not repeat or duplicate the planning officer's report".

Conclusion

21. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in respect of Costs Application A and Costs Application B.
22. Accordingly, both applications for an award of costs are refused.

Christopher Miell

INSPECTOR