



Costs Decision

Inquiry held on 22 to 24 June and 29 June to 2 July 2021

Site visit made on 6 July 2021

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 11th August 2021

Costs application in relation to Appeal Ref: APP/H1705/W/21/3269526 Land to East of Station Road, Oakley RG23 7EH

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wates Developments Ltd for a partial award of costs against Basingstoke & Deane Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for up to 110 residential units (Class C3) with all matters reserved except for access.
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Decision

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

The submissions and responses by the parties

2. The applicant's costs application and the Council's response to it were made in writing before the close of the Inquiry. The applicant's final comments on the Council's response were made orally before the Inquiry closed and can be summarised as follows:
3. The applicant disputed the Council's claim that improper conduct had occurred in terms of the approach made by the applicant to the Council seeking its withdrawal of the first reason for refusal. The approach was made in confidence and in response to hearing the concessions made by the Council's landscape witness. The applicant indicated that the withdrawal of the reason for refusal would have resulted in no costs application being made because the withdrawal would have affected the overall planning balance. The applicant also disputed the Council's allegations of threatening and bullying behaviour and disputed the criticisms made against the applicant's barrister in terms of how he had characterised some of the Council's witnesses.

Reasons

4. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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. The PPG states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The applicant has raised substantive matters only based on two submissions.
5. The first submission is that the Council acted against the advice of its professional officers and statutory consultees without producing credible evidence to justify such a departure. The second submission is that the Council

relied upon two reasons for refusal which are unconvincing, unsupported by an objective analysis and which will not stand up to scrutiny at Inquiry. These submissions are considered below. I make no comment on the parties' alleged conduct or behaviour in connection with the costs application as this has no bearing on my consideration of the application's merits.

6. Planning committees are not bound to follow the recommendations of their officers if they think there are sufficient grounds. On this occasion, a number of reasons for refusal were identified informed in part by internal and external consultation responses. While two of the four reasons for refusal were subsequently not contested based on further information supplied by the applicant, the Council put forward evidence at appeal to justify the reasons for refusal. In doing so, it was entitled to use external consultants if that was an appropriate approach. While my appeal decision comes to a different view on the reasons, the Council's actions in defending them were not unreasonable.
7. As for the quality and robustness of the evidence put forward, the applicant contends that the concessions made by the Council's landscape witness during cross-examination negated the entire reason for refusal. However, the point that the effects at Year 15 were insufficient to justify the reason for refusal does not mean that the effects before or after that year were irrelevant. The Council's landscape witness did not concede her entire case on that basis. My decision weighs up the short and long terms effects of the development and concludes the landscape effects would be acceptable. However, it was not unreasonable for the Council to maintain a different position.
8. The applicant also contends that the Council's heritage witness inflated the importance of the site and its role in contributing to the significance of the conservation area via setting. However, setting is an important consideration and influenced by many factors. Although the Council's heritage witness went further in their assessment than others had, this does not undermine the credibility of their evidence. My decision concurs that there would be a degree of harm to the conservation area's significance, albeit insufficient to justify dismissing the appeal. Therefore, it was not unreasonable for the Council to have maintained the position it held during the appeal process.
9. The applicant also criticises the approach of the Council's planning witness in how they carried out the weighing of harms and benefits in the planning balance. However, they were entitled to maintain a position that the harms significantly and demonstrably outweigh the benefits based on the Council's position regarding landscape and heritage matters. Ultimately, this appeal turned on one's planning judgment. Even though I have allowed the appeal, the Council's evidence was not unconvincing, unsupported or unreasonable.
10. In conclusion, the Council has not prevented or delayed development which should clearly be permitted, or failed to produce evidence to substantiate each reason for refusal, or made vague, generalised or inaccurate assertions about the proposal's impact. No unreasonable behaviour has been demonstrated and no unnecessary or wasted expense in the appeal process has been incurred. Therefore, no award of costs is made.

Tom Gilbert-Wooldridge

INSPECTOR