

Costs Decision

Site visit made on 24 November 2021

by Mr R Walker BA HONS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal Ref: APP/R0660/W/21/3274612 Nobanno, Astbury Mere, Newcastle Road, Astbury CW12 4HL

- 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 Walton House Trading Limited for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for redevelopment of site comprising demolition of existing building and followed by erection of 7 no. detached dwellings with associated gardens, access, and external works (outline application with all matters reserved, except access).
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. The PPG indicates that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably by delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations. Furthermore, if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Or refuses permission on grounds which were capable of being dealt with by condition. It is based on these elements that the applicant submits that the Council has acted unreasonably.
4. The applicant undertook a pre-application exercise with the Council, where various points, including the principle of development were agreed and the documents requested for the application were stipulated. In this regard, the Council have been consistent in the determination of the application, accepting the principle of development on the site, as the areas of concern were matters of detail.
5. The Council did not explicitly set down any landscape or biodiversity concerns in its pre-application response. However, the Council did advise that the scheme would benefit from a reduction in the number of units proposed, to respond to the location of the application site close to Astbury Mere and on the fringe of the urban settlement. Moreover, it requested that an ecological report

be submitted with the application, indicating that biodiversity issues were likely to be a key consideration.

6. It is not unreasonable for the Council to react to consultation responses during the planning application and respond by giving the applicant an opportunity to provide additional information, such as a Landscape Visual Impact Assessment (LVIA). I recognise that the delays in the determination of the application will have been frustrating. However, from the correspondence before me, the applicant was informed of the Council's concerns and the applicant was seeking to address them. I am also mindful that there would have been a right to appeal against non-determination that was not exercised.
7. The applicant highlighted other schemes that had been accepted near Astbury Mere, including adjacent to the appeal site. However, the Council's Officer Report (the report) did not seek to distinguish these from the appeal site and the Council's concerns. Given the relevance of these sites, I agree that the omission of this as a material consideration in the Council's report was unreasonable. Nonetheless, I have no reason to consider that the Council's assessment was made without taking the other schemes into account.
8. It is clear from the report that the Council's Planning Officer agreed with the concerns of its Landscape Officer. Although the Council's Landscape Officer did not comment fully on the updated LVIA, the report provided a substantiated reason, drawing from the value of landscaped/grass areas around the mere and the appeal site's contribution to this. Such a conclusion arises from matters of judgement on a subjective issue relating to the proposal's impact, relative to the policies of the development plan.
9. It will be seen from my appeal decision that I also consider that the development would have a harmful effect on the character and appearance of the area. As such, I do not agree that the LPA acted unreasonably in refusing the application on this basis.
10. The Council stipulated that the Local Wildlife Site (LWS) would be lost, which is a matter disputed by the applicant. However, although the underlying LWS designation would remain, I found that severing the LWS within residential gardens would have the potential for disturbance, irrespective of the positioning of houses, controls of buildings or the presence of the Tree Preservation Order.
11. Although the Council and appellant were in negotiations during the application regarding the use of metrics to establish a biodiversity net gain, the Council has not relied on such metrics in its reason for refusal or to quantify any harm. It will be seen from my decision that I was not satisfied that the proposal would not have a harmful effect on biodiversity. Given this conclusion, even without a high level of quantification by the Council in defending its decision, this has not led to any wasted expense in the appeal process.
12. The potential use of planning conditions was not specifically referred to in the report. However, it is clear from the Council's assessment that it had fundamental concerns regarding the amount of development sought for seven detached dwellings.
13. Although there maybe alternative ways of achieving the Council's design objectives (in respect of both character and biodiversity) without reducing the

red edge of the application site, I have no substantive evidence that the level of development proposed could be accommodated without the harm identified. Whilst there were no discussions with the Council regarding the potential use of conditions, given my findings in the appeal decision I can not accept that this has led to any wasted expense in the appeal process.

Conclusion

14. To summarise, even if I were to accept that the Council behaved unreasonably in the delays in determining the application, the level of detail in substantiating its reason for refusal or communication with the applicant, any such behaviour has not caused unnecessary or wasted expense for the applicant in the appeal process insofar as an award of costs could be justified.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mr R Walker

INSPECTOR