
Costs Decision

Site visit made on 20 July 2021

by J P Longmuir BA (Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2022

Costs application in relation to Appeal Ref: APP/W1850/W/21/3271172 Everstone Farm Barns, Peterstow, HR9 6NE

- 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 F and M Green for a partial award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for the erection of 3 low-cost market (affordable) and 2 no. open market dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 applicants state that the second reason for refusal in part refers to the impact on the setting of adjoining undesignated heritage assets. The Council failed to produce evidence to substantiate its position. A specialist consultant was commissioned to provide detailed technical advice.
4. The Council state that the appellant knew the asset from the planning history and the issue is a subjective matter. It did not require a specialist consultant.
5. The planning officers report at the planning application determination stage makes no mention of the impact on the non-designated heritage assets. It is not stated which building(s) is/are referred to, or any reason why designated and of significance. There is no explanation or analysis of how or why the proposal would impact on the setting. This omission is also repeated in the Council's statement of case for this appeal.
6. Whilst there may be some subjectivity in terms of the weighing up of the impact, the two Historic England publications Advice Note 7 on local listing and The Setting of Heritage Assets, provide detailed criteria for the analysis of the assets significance and setting, which then form the basis to consider a proposal's impact.
7. The applicants needed to address this element as it was part of a reason for refusal. It was a material planning consideration which could not simply be

ignored, as the information is necessary to make an informed decision. It also is unknown whether the Council's specialist officers provided advice or whether any historic records/ information sources were used to consider the significance of the asset and possible impact.

8. The Council refer to earlier applications where this concern was raised but this particular application needed to be considered comprehensively on its own particular merits. To warrant a reason for refusal, even in part requires some analysis and justification both at the application and the appeal stages.
9. The Council questioned whether a specialist consultant was needed. However, it is up to the appellants to judge the level of expertise needed and there was no basis to scope the possible impact and the issue.
10. Paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing a planning application and failure to produce evidence to substantiate each reason for refusal on appeal. The appellant therefore was to put to unnecessary expense in providing evidence on the setting of non-designated heritage assets.
11. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 Herefordshire Council shall pay to F and M Green, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the setting of non-designated heritage assets; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Herefordshire 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.

John Longmuir

INSPECTOR