

Costs Decision

Site visit made on 22 February 2022

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14th March 2022

Costs application in relation to Appeal Ref: APP/C1570/W/21/3284229 Land at Roothers Farm, Debden Green, Saffron Walden CB11 3LX

- 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 Lee Kirtland of S & L Plant for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of outline planning permission for 2no dwellings (Class C3), parking, landscaping and all associated development.
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Decision

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

Reasons

1. The application for costs seeks a full award on the basis that the Council acted unreasonably during the determination of the planning application and prevented or delayed a development which should clearly be permitted. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
2. In respect of the first main issue for the appeal, the appellant asserts that the Local Planning Authority (LPA) behaved unreasonably by not seeking comment on the application proposals and accompanying evidence from the Council's in-house landscape officer and not taking sufficient account of the appellant's Landscape and Visual Appraisal report (LVA). On the issue of heritage matters, the appellant submits that the consultation response from Essex County Council's (ECC) Built Heritage Consultant (dated 7 August 2021) was only provided to the appellant after the LPA made its decision, thus depriving the appellant of an opportunity to respond as part of the application process.
3. PPG paragraph 16-033-20140306 generally cautions against the award of costs for the period during the determination of the planning application but advises that all parties should behave reasonably throughout the planning process and behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. In respect of the main character and appearance issue, the appellant refers to PPG Paragraph 16-049-20140306 asserting that the LPA has relied on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The appellant further submits that the LPA has behaved unreasonably in not determining similar cases in a consistent

manner by reference to other proposals consented nearby in Debden Green. The LPA officer report is comprehensive and deals with character, appearance and heritage in some detail at Section 2 of the report. The professional officer assessment starts at the fifth paragraph in Section 2 and deals with the character of the appeal location and provides a cogent assessment to inform a conclusion of significant harm. I have found this to withhold scrutiny as part of the separate appeal decision and have independently arrived at a similar conclusion, with full regard to the appellant's LVA.

5. From the appellant's site location plan (which clearly shows the limited relationship of the appeal site to the existing settlement pattern) and from observations on site, the effect on character and appearance is not a particularly complex issue in this case such that the LPAs judgement of harm did not rely on vague, generalised or inaccurate assertions. In this context I do not find the omission of a landscape officer's input to have been unreasonable in what is a relatively straightforward situation or that it would necessarily have led to a different conclusion when assessed against the relevant development plan policies. I note from the appellant's planning statement at paragraphs 1.10 and 1.11 that the LPA has been reliably consistent in its position regarding harm to the local character, including at an early pre-application stage.
6. Whilst the LPA report does not reference or list the appellant's LVA that is not in itself unreasonable behaviour. Whilst the LPA has arrived at a different judgement as set out in its report and appeal statement of case, it has clearly considered matters raised in the LVA such as the effectiveness of landscaping as mitigation.
7. In respect of heritage advice there has been an issue and the LPA acknowledges that pre-application advice did not identify impact on the setting of a listed building as a particular issue. Pre-application advice is not binding on the LPAs formal decision-making process and obviously precedes formal consultation, including with ECC Built Heritage. Paragraph 4.14 of the appellant's planning statement accompanying the planning application states that there are no listed buildings that would be directly affected by the proposals, which infers the appellant had considered the matter, including at Section 6.5 of the appellant's LVA. Clearly, the appellant was cognisant of the listed building as an issue when submitting the planning application and arrived at a judgement of no harm to its setting.
8. The LPA asserts that the ECC Built Heritage response was uploaded on its website on 9 August 2021. This does not appear to tally with the appellant's screenshot of the application file. Clearly there have been issues around the timely publication of application documents. Nonetheless, the appellant has had the opportunity through the appeal process to address the LPAs heritage concerns, which were reasonably articulated in Section 2 of the LPA officer report, and which reflect the ECC Built Heritage Consultant's concerns and conclusion of less than substantial harm. The LPA appeal statement deals with heritage matters at paragraph 6.10, in turn drawing on the RPS Heritage Appeal Statement (October 2021) which concludes, amongst other things, that the appeal development would be in-keeping with its surroundings and with the setting of the listed building. For the reasons set out in the separate appeal decision, that conclusion is not shared. Accordingly, the LPA has not behaved unreasonably during the determination of the planning application in terms of

its consideration of the ECC Built Heritage objection and so the LPA has not prevented or delayed a development which should clearly be permitted.

9. The appellant refers to other decisions in the locality¹ and infers inconsistent decision-making by the LPA. On the two main substantive site specific issues in the appeal I find the LPA has appropriately considered the appeal proposal on its own merits and the particular circumstances at the appeal location.
10. Taking all of this into account I do not find on the two main issues in the appeal, on substantive grounds, that the LPA has unreasonably prevented or delayed a development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations in the terms expressed at PPG paragraph16-049-20140306.
11. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated in relation to the appeal.
12. For the reasons given above, I refuse the application for an award of costs.

David Spencer

INSPECTOR.

¹ Identified in Figure 2 of the Appellant's Design & Access Statement