
Costs Decision

Site visit made on 23 November 2021

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2022

Costs application in relation to Appeal Ref: APP/U3935/W/20/3263948 Land to the North of, Nightingale Lane, South Marston, Swindon SN3 4SR

- 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 Bower Mapson Homes Ltd for a full award of costs against Swindon Borough Council.
 - The appeal was against the refusal of planning permission for erection of 5 no dwellings, new public park and woodland and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process. It sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. The PPG is also clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The PPG¹ provides examples of behaviours that risk an award of costs. With reference to those examples, the applicants contend that the Council has behaved unreasonably in the following ways:
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead;
 - persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
4. The applicant asserts that the Council has failed to provide any evidence to support its position on flood risk/drainage. The evidence before me

¹ PPG Paragraph: 049 Reference ID: 16-049-20140306 - Revision date: 06 03 2014

demonstrates that an ongoing dialogue occurred between the Lead Local Flood Authority and the appellant during the planning application process. This dialogue resulted in amendments to the scheme but did not address the Council's objection to diverting drainage through a culverted section. The Council's statement refers to the PPG advice that blockage of a surface water conveyance system represents a residual risk. I find this to be a substantive reason for refusal. Whilst I have agreed with the applicant that the risk can be appropriately mitigated, doing so requires an exercise of planning judgement. The Council have not acted unreasonably in reaching a different conclusion and in seeking evidence of an appropriate drainage solution prior to granting permission.

5. The submitted Phase 1 Habitat Survey and Protected Species Survey Assessment² (the report) advises that it is not a comprehensive analysis of the ecological interest of the site and that many protected species were unlikely to be noted, visible and/or identifiable during the walkover surveys that informed the report. The report goes on to advise that protected species surveys were not undertaken for the site and recommends phase 2 presence/absence surveys should be completed for Great crested newt, Otter, Water vole and White-clawed crayfish, to assess and set out any requirements for further mitigation before, during and after the actual development phase.
6. The Planning Practice Guidance advises that ecological surveys are necessary in advance of a planning application if there is a reasonable likelihood of a protected species being present and affected by development³. Given the noted limitations of the Phase 1 Survey, the use of a condition securing additional surveys would not be reasonable in this case.
7. With respect to the third bullet point, the development is materially different to that dismissed in the recent appeal decision⁴ on the same site. In making these amendments to the previously dismissed scheme, the applicant has sensibly attempted to address the reasons for dismissal set out in the recent appeal decision. Whether these amendments have succeeded in appropriately addressing the reasons for dismissal stated is a matter of reasonable planning judgment. With regards to heritage matters, I find that the Council's case includes an assessment that is neither vague nor generalised. It sets out clearly how the Council considers the development would not be in accordance with local and national policies and is consistent with the findings of the recent appeal decision.
8. Overall, I have agreed with the Council that permission should be withheld. As such, I am not persuaded that the Council has demonstrated unreasonable behaviour resulting in unnecessary expense during the appeal process.

Conclusion

9. For the reasons above, and having regard to all other matters raised, an award for costs is not justified.

S D Castle

INSPECTOR

² Bearwood Associates Ltd – Phase 1 Habitat Survey & Protected Species Survey Assessment (1 June 2019)

³ Paragraph: 018 Reference ID: 8-018-20190721 Revision date: 21 07 2019

⁴ Appeal Ref: APP/U3935/W/19/3235217