



Costs Decision

Hearing Held on 26 October 2021

Site visit made on 26 October 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2022

Costs application in relation to Appeal Ref: APP/W0340/W/21/3274414 Vine Cottage, Curridge Road, Curridge, Thatcham RG18 9EF

- 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 S Fairhurst for a full award of costs against West Berkshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for creation of ecological pond, bunds, soakaways, earthworks and a soft landscaping scheme.
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Decision

1. The application for costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG states that the circumstances when the behaviour of a local planning authority might lead to an award of costs can either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
4. The applicant provided a copy of his written cost's application at the Hearing, the local planning authority's ('LPAs') response was also provided in writing at the Hearing. Therefore, it is not necessary to set those out in detail here. In summary, the applicant's application for costs is based on the alleged unreasonable behaviour of the LPA and wasted expense, for procedural reasons for the alleged failure of Members to determine the application in accordance with officer recommendation and to explain the reasoning for overturning the officers' recommendation, the LPAs withdrawal of reason for refusal 1 ('RfR1') and for substantive reasons in respect of this reason and the LPAs reason for refusal 2 ('RfR2').
5. The application was considered at the Western Area Planning Committee on 4 November 2020. Although the officer recommendation was to approve the application, subject to conditions, Members refused the application on two grounds, as set out in the LPAs decision dated 6 November 2020.
6. Notwithstanding the advice of the LPAs officers and consultees, Planning Committees are not bound by a professional recommendation and are entitled to depart from this based on the facts of the case and planning judgment. However, this is not an

unqualified right, as members of a planning committee must be able to properly substantiate any concerns identified.

7. I have taken account of the legal judgements referred to me by the applicant and his correspondence to the LPA and others, including a Freedom of Information request seeking clarification and reasoning behind the refusal reasons.
8. However, drawing on the LPAs decision, the minutes from planning committee, along with the fact that the applicant and his representatives took part in the virtual planning committee meeting, I am satisfied that together these provide sufficient information as to why Members made a decision contrary to officer recommendation. Moreover, the applicant was able to prepare detailed appeal submissions on the basis of that information.
9. Turning to RfR1, in its appeal statement, the LPA confirmed that in light of the applicant's appeal submissions, it did not intend to defend RfR1. The applicant was advised of this, two weeks prior to the date of the Hearing, in my view this timescale would have been sufficient to inform the relevant expert witnesses and is not in itself unreasonable.
10. The LPAs reason for withdrawing RfR1 was based on the information provided in the Water Resource Associates Appeal Statement, dated 2 July 2021 which included Annex 1-Report on Stability Analysis of Bund Slopes, along with other information about construction and maintenance in relation to the proposal.
11. I acknowledge that the applicant's appeal submissions provided some additional information that was not available at the time planning committee made the decision on the planning application. Irrespective, such information, which was the basis for RfR1 could have been addressed by the pre-commencement conditions provided by officers in the Update Report to planning committee, which at the time, the applicant agreed to.
12. Moreover, had the LPA imposed conditions requiring the submission of details which were subsequently not acceptable to the LPA (because they – for example – required amended scale/appearance etc of the bunds or failed to satisfy the requirements of the LPAs Drainage Engineer) then the LPA would simply have refused to discharge those conditions and the development could not have proceeded. On that basis the imposition of RfR1 was unreasonable.
13. With regard to RfR2, in summary, this alleges the failure of the proposal to conserve and enhance the local distinctiveness of the North Wessex Downs Area of Outstanding Natural Beauty ('AONB'). This reason also refers to Policy CS19 of the of the West Berkshire Core Strategy (2006 - 2026) Adopted July 2012 ('CS'). Amongst other things, this Policy requires proposals to respond to the distinctive character areas and key characteristics identified in relevant landscape character assessments. In particular, the LPA has referred to the West Berkshire Landscape Character Assessment which includes the North Wessex Downs Area of Outstanding Natural.
14. Policy CS19 also requires that new development is appropriate in terms of location, scale and design in the context of the existing settlement form, pattern and character. Therefore, this Policy also broadly relates to matters of scale and significance which are expressed in the LPAs appeal statement.
15. RfR2 also refers to the National Planning Policy Framework which sets out national policy requirements in relation to Areas of Outstanding Natural Beauty. Moreover, Section 85 of the Countryside and Rights of Way Act 2000 (CROW) places a duty on

relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of an Area of Outstanding Natural Beauty.

16. I acknowledge that the allegation made in RfR2 and the evidence in support of this in the LPAs appeal statement is contrary to the observations set out in the officer report to planning committee, in respect of the effects of the proposal on the character and appearance of the area. Nevertheless, as already stated, committees are not bound by a professional recommendation and are entitled to depart from this based on the facts of the case and planning judgment.
17. In particular, and notwithstanding the lack of any specific advice from a landscape specialist, the members' consideration of the effects of the proposed development on character and appearance involves some subjective analysis having regard to the context of the site, the proposal and the development plan and any other material considerations. Furthermore, some members would have local knowledge of the site and area, and also took part in discussions about the proposal at the committee. Also, in my judgement, character and appearance encompasses both effects on landscape character and visual impacts.
18. Therefore, even though in allowing the appeal I have found in favour of the applicant in respect of RfR2, I am satisfied that RfR2 is complete, precise, specific and relevant to the proposal. Furthermore, the LPAs conclusions about the effects of the proposal on the AONB are also supported by the minutes of planning committee, the analysis set out in the appeal statement and the discussions on this matter at the Hearing. Accordingly, in my view the imposition of RfR2 does not amount to unreasonable behaviour.
19. Nonetheless, based on my findings in respect of RfR1, up until a day after this being withdrawn by the LPA, the applicant did incur costs of having to prepare and provide information as part of the appeal to defend this particular reason for refusal.

Conclusion

20. I therefore find that unreasonable behaviour on the part of the LPA resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the PPG, has been demonstrated. Accordingly, I conclude that a partial award of costs is justified.

Costs Order

21. 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 West Berkshire Council shall pay to Mr S Fairhurst the costs of the appeal proceedings described in the heading of this decision but limited to those costs incurred in responding to RfR1 of the authority's decision only, and such costs shall be assessed in the Senior Courts Costs Office if not agreed.
22. Mr S Fairhurst is now invited to submit to the 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.

M Aqbal
INSPECTOR