
Costs Decision

Site visit made on 22 March 2022

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Costs application in relation to Appeal Ref: APP/C9499/W/21/3284867 Barn north of Old Gayle Lane, Hawes

- 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 GTEC Property Holdings Limited for a partial award of costs against Yorkshire Dales National Park Authority.
 - The appeal was against the refusal of planning permission for conversion of a barn into a 4 no. bed (local occupancy/short term holiday let) along with formalisation of the existing access and associated development.
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Decision

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

The submission by GTEC Property Holdings Limited

2. The applicant argues that the Yorkshire Dales National Park Authority ("the YDNPA") acted unreasonably by refusing the application on the basis that it does not accord with the locational requirements of Policy L2 of the Yorkshire Dales Local Plan (2015-2030) ("the Local Plan"), and this has led to time, and associated expenditure being unnecessarily spent in dealing with this aspect of the appeal.
3. In particular, the applicant states that the relevant matters relating to a previous appeal APP/C9499/W/17/3187126 ("the Tug Gill Laithe decision") which considered the definition of 'close proximity' in the context of Policy L2 were drawn to the YDNPA's attention and are a material consideration as an appeal precedent. The applicant argues that the YDNPA is unjustifiably and inappropriately dismissive of that Decision, and it was not considered within the officer report as part of the decision making process. The applicant argues that whilst otherwise unchallenged, the interpretation of Policy L2 at appeal does not mean that the YDNPA's interpretation is correct. They maintain that circumstances between that case and the current appeal proposal are very similar and cannot be properly distinguished.
4. The applicant considers that the YDNPA's behaviour is not dissimilar from 2 examples of behaviour which are cited in the Planning Practice Guidance ("the PPG") which might lead to a substantive award of costs.

The response of Yorkshire Dales National Park Authority

5. The YDNPA argues that despite a number of refusals arising from the application of Policy L2, the locational element of Policy L2 has only been

challenged once. They advise that the Tug Gill Laithe decision had led the them to lodge a complaint to the Planning Inspectorate about the Inspector's interpretation of that policy. The YDNPA maintains that one appeal decision cannot be considered as well-established case law and points out that the applicant has conceded it can only be considered as appeal precedent. The YDNPA maintains that the Tug Gill Laithe decision is a side issue. The YDNPA advise that it continues to regard the Tug Gill Laithe decision to be a 'rogue' one-off decision rather than a correct example of how to apply the locational requirements of Policy L2. The YDNPA maintains that it advised the applicant accordingly during the determination process.

6. The YDNPA maintains that having considered the case at Tug Gill Laithe as part of the determination of the Old Gayle Lane application, they looked at the specific facts and planning merits of the case and exercised their own judgement in considering the relevance of that appeal decision and what weight should be applied to it.
7. The YDNPA argues that although the applicant did not have sight of the Planning Inspectorate's response to their subsequent complaint about that earlier appeal decision until this appeal stage, that has not caused the applicant to incur additional costs, unless they are now acknowledging that the YDNPA's case is correct, and in that knowledge they would not have lodged the appeal had they had seen it.

Reasons

8. The YDNPA did not clearly convey in the officer report that they had regard to the Tug Gill Laithe decision even though it was an outstanding matter of contention for them and had been specifically raised by the applicant. Furthermore, there was a delay in the YDNPA fulfilling a request for information to assist in the applicant's understanding of their stance.
9. The YDNPA in their decision making capacity was entitled to come to the view it did, and it is for the courts to determine what was material at that time. There is nothing before me that indicates that these omissions were intentional and that had they applied appropriate clarity and speed the reasons for refusal would have been different. Although these omissions are unfortunate and could have been avoided, they do not amount to unreasonable behaviour in this particular instance.
10. The main parties agree that the disputed interpretation of definitions relied upon by Policy L2 of the Local Plan is not established case law. Crucially, even when taking the broader of the main parties interpretation of Policy L2 and its footnotes, the disputed definitions and the conformity with these or otherwise have not been determinative to the outcome of this particular appeal.
11. Even if the appeal proposal fulfils the locational criteria set out in Policy L2 of the Local Plan, it does not undermine the need for the decision maker to assess the appeal proposal's landscape effects and conformity with the other development plan policies in that regard. Furthermore, in this instance the YDNPA had identified harm to the character and appearance of the area which in part is borne out of the site's individual location, to which I have concurred.
12. Due to the interrelationships between location and landscape effects of the appeal proposal, it is not unreasonable to have expected that the applicant

would cover this matter as part of their appeal submission even had the main parties been in agreement that the appeal building occupied a roadside location.

Conclusion

13. For the reasons given above, I do not find that unreasonable behaviour from the YDNPA on substantive grounds, as described in the PPG is evident. Consequently, neither has any unnecessary expense in terms of defending this appeal occurred.
14. As the relevant tests set out in the PPG in respect to the determination of costs applications have not been met, I conclude that an award for costs is not justified.

C Dillon

INSPECTOR