
Costs Decision

Site visit made on 26 April 2022

by Edwin Maund BA (Hons) MSc Dip UP MRTPI

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

Decision date: 24th May 2022

Costs application in relation to Appeal Ref: APP/E2530/W/21/3285633 Land South of Harvey Close and West of Wincanton Way Bourne PE10 9PQ

- 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 Bellway Homes Ltd (Eastern Counties) for a full award of costs against South Kesteven District Council.
 - The appeal was against the refusal to approve details required by condition No 5 of a reserved matters application for details relating to external appearance, layout, scale, and landscaping, with associated open space and infrastructure for the erection of 373 new dwellings, pursuant to Outline Planning Permission under application ref: SK.94/0125/12.
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Decision

1. The application of an award of costs is allowed in the terms set out below.
2. The Appellant submits that the Council has acted unreasonably in that it has gone against the advice of its professional officers without good reason and it has sought to use the requirements of the landscaping condition to retain a bridge which has no protection in planning terms. This approach represents a misuse of the Council's powers.
3. The Council in response argue that elected Members are entitled to set aside professional advice, and in considering the concerns of residents and interest groups the total loss of the bridge and the landform around it would be a failure of their duties to protect a non-designated heritage asset and thereby be in conflict with Local Plan Policy DE1 but also the NPPF.
4. The National 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 or wasted expense in the appeal process.
5. It is plain from the decision to grant the reserved matters, that at that time the Council recognised the bridge was of some interest as they sought to have the details of it recorded prior to its demolition. The reason for imposing the condition states *"In order to ensure the historic elements of the building are adequately recorded prior to demolition."*
6. The Council in considering the reserved matters application and imposing condition No 5 which was subject to this appeal, agreed the principles of the landscape masterplan drawing number PR205 - 01 C and expected the details

to discharge this condition to accord with it. Upon that drawing a note was added dated 7 of January 2021 which states *"the existing bridge is to be removed. The plan area of the bridge is to be paved to create a contextually meaningful seating area within the children's play area."*

7. It is therefore hard to argue that the Council did not understand the principles with which they were agreeing in line with that plan did not include the removal of the bridge and in imposing condition No 2 had recognised there was a heritage interest whether it was formerly recognised as an undesignated heritage asset or not.
8. As part of those principles the master plan also included details of contours showing embankments around the outside of the proposed play area which is consistent with the details now submitted as part of the plans the subject to this appeal.
9. it is not an area of dispute between the parties that the bridge is of some interest and provides a physical reminder into the history of the railway in this part of the county. Nevertheless, refusing the discharge of a condition for landscaping details is not a suitable vehicle to safeguard the future of a structure whether it be regarded as a non-designated heritage asset or not. The Council would have needed to protect the asset had it been considered to be appropriate to do so much earlier in the planning process.
10. The conservation officer in making comments on the appeal details while stating that the bridge was regarded as a non-designated heritage asset did not object to its removal as long as the building was appropriately recorded. This has been agreed with the Council in line with the other condition that was the subject of the original application to which this appeal relates.
11. The Council have not sought to demonstrate that there had been any change in circumstances since the granting of the outline planning permission or the subsequent granting of reserved matters for this phase of this residential scheme. It is in these circumstances wholly unacceptable therefore to seek to use the loss of the bridge as a reasoned argument to prevent the approval of the landscaping details for a play area.
12. In choosing to ignore the planning officer's advice the elected members must have regard to clear reasoning for doing so and cannot ignore the decisions previously made. While they are entitled to make a different decision, it must have a sound and reasoned basis which is patently lacking under the circumstances of this case.
13. The Council's behaviour is unreasonable, the decision to reject the details of the condition are without foundation and has clearly resulted in an unnecessary appeal.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

15. 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

South Kesteven District Council shall pay to Bellway Homes Ltd. (Eastern Counties), the costs of the appeal proceedings described in the heading of this decision.

16. The applicant is now invited to submit to South Kesteven District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Edwin Maund

INSPECTOR