



Costs Decision

Hearing held on 21 June 2022

Site visit made on 21 June 2022

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2022

Costs application in relation to Appeal Ref: APP/Y2430/W/22/3296156 Land adjacent to Crompton Road, Asfordby Hill

- 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 Talavera Estates Ltd for a full award of costs against Melton Borough Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for the erection of up to 90 dwellings with all matters reserved other than means of access.
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Decision

1. The application for an award of costs is allowed on a partial basis in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may 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.
3. The applicant is of the view that the Council's reasons for refusal are not supported by the Local Development Plan or the National Planning Policy Framework (the Framework) or any evidence and is preventing development which should clearly be permitted having regard to the development plan, national policy and any other considerations. In essence the applicant considers the reasons for refusal have been manufactured to justify a refusal due to Member's unwillingness to allow development of up to 90 dwellings given this, together with existing development/planning permission, would be in excess of the indicative capacity for the allocation in the Melton Borough Local Plan 2011-2036 adopted 2018 (the Local Plan).
4. In addition to the written costs submission, the appellant, at the Hearing, considered it unreasonable that Members had not been present at the Hearing to put the Council's case. However, the fact that the Council was represented by the Case Officer at the Hearing and not the Members is not unreasonable. It was clear that the professional views of the Case Officer were different to the Council's, but it was the Council's case that was presented to the Hearing.
5. Following a visit to the site by Members, the planning application the subject of the appeal was reported to the Planning Committee on the 19 August 2021 with a recommendation to grant planning permission. The minutes of the

meeting show that discussion mainly concerned the impact on highways and drainage although the issue of a suitable landscape buffer was also raised. The Council resolved to defer the application at that time to allow for further discussions.

6. During the discussions between parties the number of houses was reduced from 100 to up to 90 and more detailed highway assessment was undertaken. A further report was considered at the Planning Committee on 7 October 2021 also with a recommendation from officers to grant planning permission. The Council though resolved to refuse planning permission for two reasons. The minutes state the points that were discussed during Member's deliberation of the application, including the two reasons for refusal. Although it would have been helpful, even though the reasons for refusal were not raised in detail at the first committee meeting, that does not preclude Members reaching the conclusions they did at a later stage. The reasons are articulated within the decision notice and supported with reference to relevant Local Plan policy and the Framework.
7. That the Members found less than substantial harm to the significance of the heritage assets is reasonable, particularly given the consultation response from Heritage England which is detailed within the Committee report, and which the Council relies on. In fact, there is agreement in the Statement of Common Ground that the proposal would cause less than substantial harm to the significance of the heritage assets, with the harm being at the lower end of the scale, similar to the findings of Historic England.
8. Although the minutes do not record that the Members carried out the necessary heritage balance under paragraph 202 of the Framework, that is not to say it was not done. It also does not include any record of a development plan balance under S38(6) of the Planning and Compulsory Purchase Act 2004, again that does not mean to say it wasn't carried out when Members reached their conclusions. It has to be assumed that Members of the Planning Committee are appropriately trained. The minutes are not a verbatim record of the meeting. I appreciate the position of the applicant, whose representative attended the meeting, however, the heritage balance is included in the Committee report as are the benefits of the proposal, as such Members would have been aware of the requirement to undertake the balancing exercise. While Members may have put the same weight to the benefits as the applicant, it is for the decision maker to then undertake the balancing exercise as they see fit. That Members reached a different conclusion on that balance to officers and the applicant is not unreasonable. This was the position assumed at the Hearing.
9. While it is accepted that the proposal is in outline form for up to 90 dwellings with matters of layout, scale, appearance and landscaping to be determined by the Council in the future, it is right that the Council considered whether the appeal site could accommodate the highest proposed number of dwellings without causing harm, particularly given the increase in numbers over and above the allocation and the prominent position of the site in the landscape and its relation to heritage assets. While it can be assumed that residential development would be acceptable on the appeal site, given it is an allocated site in the Local Plan, that does not mean that it would not be subject to other policies in the Local Plan to ensure the houses can be delivered without causing material harm. The only evidence before the Council of how the appeal site

could accommodate 90 dwellings was in the form of the indicative layout and it is right therefore that the Council used this as a basis for assessment.

10. However, the evidence supporting the landscape reason for refusal is vague and generalised. I accept that the consideration of landscape matters is essentially one of planning judgement. However, other than its assertion that the scale, volume and density of the development and its location on the hilltop were unacceptable, the Council was unable to articulate, in any meaningful way, the physical manifestation of the harm caused by the quantum of the built form as proposed, either in its statement of case or at the Hearing. It was also not supported by any analysis in the form of a Landscape and Visual Assessment to address the detailed evidence supplied by the applicant. In this regard therefore the Council was unreasonable. The applicant was put to unnecessary expense in having to provide a witness to prepare evidence to address this unsubstantiated reason for refusal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified in relation to the Council's reason for refusal No 1 regarding landscape matters.
12. 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 Melton Borough Council shall pay to Talavera Estates Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the Council's reason for refusal No 1 regarding landscape matters; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Melton Borough 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.

Zoe Raygen

INSPECTOR