
Costs Decision

Site visit made on 4 July 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2022

Costs application in relation to Appeal Ref: APP/M2840/W/21/3287516 Land to the east of Addington Road, Ithlingborough, Northamptonshire

- 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 Countryside Properties for a full award of costs against North Northamptonshire Council.
 - The appeal was against the refusal of planning permission for 54 dwellings and associated development.
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Decision

1. The award for costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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 costs application alleges that;
 - In altering the first reason for refusal's definition of harm to the heritage assets, from "substantial" to "less than substantial" and in incorrectly identified Manor Mews as a heritage asset rather than non-designated heritage asset, the Council overstated the level of harm found. The Council consequently incorrectly balanced the level of harm and gave insufficient weight to the public benefits of the scheme.
 - Concerning the second reason for refusal, the Council ignored the professional advice of the Highway Authority and officers when making its decision. Furthermore, no evidence was submitted in the Council's Statement of case to substantiate its concerns and the weakness of this objection was confirmed by the Council's unwillingness to defend it at appeal.
 - Accordingly, as a consequence of the above, the applicant alleges that the decision to refuse the application was flawed and this led to unnecessary and wasted expense.

Substantial harm

4. The National Planning Policy Framework (The Framework) explains, at paragraph 201, that where a proposed development would lead to substantial harm, or total loss of significance, of a designated heritage asset consent

should be refused. Substantial harm is a high test that will not manifest in most cases as this would result in an adverse impact that seriously affects a key element of its special character or historic interest. It is evident that the proposal would not meet this high bar and instead would fall within the “less than substantial harm” level of harm. Accordingly, in finding substantial harm the Council made an error in calibrating the level of harm.

5. Nevertheless, these were properly articulated within its Statement of Case in finding the harm to be “less than substantial”. As such, whilst this was a significant mistake to make, it did not fundamentally alter the Council’s objection to the proposal or materially alter the appellant’s approach in challenging this impact.
6. Manor Mews is a non-designated heritage asset (NDHA). The Council identifies this within comments made by its conservation officer. However, the Committee report, Statement of Case and reason for refusal incorrectly conflates reference to the NDHA with the harm found to designated heritage assets, misapplying paragraph 202 of the Framework. The Framework is clear that when assessing the effect of development on a NDHA a balanced judgement is required, taking into account the scale of any harm or loss and the significance of the heritage asset. Therefore, although the NDHA has not been correctly separated and considered discretely, this overstatement has had only a limited bearing in the Council’s overall weighing of harm.

Balancing weight

7. It is undisputed between parties that the proposal would result in less than substantial harm to the significance of the conservation area and heritage assets. I have noted the recommendation of the Council’s officers, recommending approval. However, Planning Committee Members came to a view that the public benefits, associated with the proposal, would be of insufficient magnitude to outweigh the great harm found to the designated and non designated heritage assets.
8. The approach to this balancing exercise is established at paragraph 202 of the Framework, where harm to the significance of an asset should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I concur with the appellant that the harm was initially overstated by the Council. However, once recalibrated by the Council to less than substantial harm within its Statement of Case, I find limited dispute between parties as to the overall effect of the proposal on the surrounding area in terms of harm.

The balancing exercise is a matter for the decision maker. The minutes of the Committee meeting illustrate that Members were mindful of the allocation of the site for housing and discussed the affordable housing offered and were able to see the benefits identified within the Committee Report. As such, the balancing process was properly undertaken, with Planning Committee being cognisant of the merits of the case and recognised the need to balance these against the adverse effects on the identified heritage assets. Therefore, notwithstanding the advice of professional Officers, Committee Members were entitled to assess the effect of the proposal and apply different weight to these effects. I am satisfied that Members were well informed before making a decision and properly considered the proposal. The Planning Committee

Members did not therefore behave unreasonably in reaching their own conclusions on the application.

9. Furthermore, the Council's Statement of Case has provided a clear and detailed explanation as to why the Council refused the proposal contrary to officer advice. I have also noted that extensive engagement was undertaken by the applicant both before and after submission of the planning application. Notwithstanding this dialogue, the Council has since substantiated the concerns of the Committee on matters that were largely subjective. The Council has therefore provided adequate justification for its stated objections to the proposal. Although I have not concurred with the Council's conclusions in my main decision, its evidence illustrates that the proposal was refused on reasonable planning grounds.

Reason two

10. It is recognised that highway related matters were discussed at length between the Council and Appellant during the course of the planning application. It is also noted that Addington Road is relatively narrow and congested with on-street parking, creating some tension in the highway when considering the effect of a new access within this context.
11. The Council concluded that the second reason for refusal could not be defended. Consequently, this reason for refusal was withdrawn by the Council following its review of the appellant's case. The Council has assisted the appeal process by reducing the matters of dispute and assisted my consideration of the matters in dispute in considering the merits of the appeal. This, therefore, illustrates that the Council behaved reasonably in this matter.

Conclusion

12. Therefore, I am satisfied that Committee Members properly assessed this matter objectively on the basis of the evidence provided to them. The misapplication of substantial harm did not fundamentally alter the Council's assessment of the scheme or its balancing exercise.
13. Accordingly, whilst I have concluded that the Council's concerns were not sufficient to dismiss the appeal, I do not consider that its decision was so fundamentally flawed or without foundation as to amount to unreasonable behaviour. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

B Plenty

INSPECTOR