



Costs Decision

Site visit made on 7 November 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2022

Costs application in relation to Appeal Ref: APP/F3545/W/22/3301432 All Saints Hotel, The Street, Fornham St Genevieve, Suffolk IP28 6JQ

- 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 David Harris for a full award of costs against West Suffolk Council.
 - The appeal was against the refusal of planning permission for a development described as 'change of use of part of golf course for the siting of 15 caravan lodge holiday homes and associated infrastructure'.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also states that a Council is at risk of an award of costs if it prevents or delays development which should clearly be permitted, fails to provide evidence to substantiate each reason for refusal or relies on vague, generalised or inaccurate assertions about a proposal's impact.
3. The Council's planning committee refused the proposal against the advice of Officers, which was set out in a detailed report. Nevertheless, the committee members were entitled to do so, as they are not bound to follow the recommendation of its Officers. Such an approach would render the committee superfluous. Nevertheless, the committee must be able to clearly articulate and substantiate its decision, especially when departing from professional advice.
4. In this respect the reason for refusal was reasonably clear, precise and grounded in development plan policy, including Policy DM34 of the DMP¹. In summary, the Council are concerned that the proposal would result in coalescence, harm the setting of Bury St Edmunds, by closing an important green gap, and injure the visual amenity of the area due to intrusive urbanising development viewed from Mildenhall Road and the Lark Valley Way. These are matters with an element of subjective planning judgement.
5. There is a contradiction in the reason for refusal that the proposal would be 'intrusive' but in 'glimpsed views'. However, this point was elaborated upon at

¹ Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document February 2015

the hearing to explain that the development would have a presence in what is a green gap. I share the view of the Council on this point and although I do not consider the harm would be as extensive as suggested, there would be some adverse impacts on the character and appearance of the area. This would result in a conflict with Policy DM34 of the DMP for the reasons set out in my decision.

6. Whether the above harm would be outweighed by the benefits of the scheme is also a matter of judgment. Accordingly, the appeal scheme is not one that should clearly have been permitted, especially when considered in the context of the previous appeal decision².
7. Unlike the applicant, the Council has not provided a formal landscape assessment and nor did any landscape specialist attend the hearing. The Officers at the hearing were also placed in a difficult position because their professional opinion was set out in the committee report, and this was one of support for the proposal. This effected the robustness of the case made. However, it would be wrong to suggest the Council provided no substantive evidence. Indeed, the Officers that attended the hearing were able to adequately articulate the Council's concerns with reference to matters of landscape character and visual impact.
8. Within its appeal statement the Council referenced unsupportive comments from its Landscape Consultant. It later transpired that these were earlier comments that had been made prior to amendments to the scheme. The Landscape Consultant's comments were later softened but never confirmed support for the scheme. The Council clarified the evolution of the comments at the hearing in a clear and straightforward manner. Therefore, I do not consider this was a deliberate attempt to mislead. In any event, the Council's case did not stand or fall on this point alone.
9. The Council's evidence on character and appearance was not as systematic as that presented by the applicant, particularly when considering whether the impact would be 'significant'. However, it was not vague or generalised. The Council referred to specific concerns, including views from identified vantage points and the particular importance of the appeal site to the green gap between settlements. The Council was also clear that it was the presence of the lodges in this particular location that was considered to be problematic. I came away from the hearing with a clear understanding regarding the points in dispute, many of these being matters of subjective judgment. It must also be borne in mind that Policy DM34 seeks to prevent significant adverse impacts at criteria (d) but not in the overarching test at criteria (b).
10. In conclusion, the Council's reason for refusal stood up to scrutiny and had some merit. The appeal was ultimately permitted because the benefits would outweigh the limited harm. This is a matter of judgment. Thus, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred. The application for costs is therefore refused.

Graham Chamberlain
INSPECTOR

² APP/F3545/W/20/3249902