
Costs Decision

Hearing Held on 8 November 2022

Site visit made on 8 November 2022

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Costs application in relation to Appeal Ref: APP/Q3305/W/21/3286463 Land East of Coalpit Lane, Stoke St Michael, Somerset, BA3 5JT

- 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 Stoke St Michael LVA LLP for a partial award of costs against Mendip District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the residential development of up to 47 dwellings, public open space, ecological mitigation land, landscaping and associated works, with access from Coalpit Lane.
-

Decision

1. The application 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. The PPG provides that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, or by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The application for costs from the appellant relates to the issues of potential impact to nearby listed buildings and also the consequence of the loss of agricultural land. Neither issue formed part of the Council reasons for refusal, though were included within the Council's statement of case and their planning balance.
4. With regards the nearby listed buildings, this was an issue raised by the Conservation Officer of the Council during the course of the planning application. The Conservation Officer highlighted both Mill Cottage and Stoke Mill, which are Grade II listed. The Conservation Officer stated that "The proposed development could cause some harm to the significance of the identified heritage assets due to the impact of the development upon their settings". She went on to set out that the impact would be minimal and could be mitigated at Reserved Matters stage. Nevertheless, some harm was identified to their setting.

5. Whilst it seems to be the Council position that this harm could be mitigated, or that such harm would be outweighed by the public benefits (as is the test set out in the National Planning Policy Framework paragraph 202), it is still an issue that I needed to have regard to. The Framework stated that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
6. As can be seen from the Appeal Decision, I have found that there would be less than substantial harm to the setting of these heritage assets, but this is outweighed by the public benefits of the proposals. The Appeal Decision makes clear that having considered the policies of the Council and the Framework that the low level of impact to the setting of the listed buildings did not provide a reason to dismiss the appeal, with it also possible that mitigation at reserved matters stage could remove this harm to some extent. Nonetheless, it was an important issue that needed to be addressed to come to these conclusions, whether it was part of a Council reason for refusal or not. I do not consider that the Council has been inconsistent on this matter, though they could have explained their conclusions on this issue with greater clarity in their planning application report.
7. On this basis, the Council has not introduced a new reason for refusal in my opinion and have not behaved in an unreasonable manner with regards to heritage issues with the appeal.
8. The second matter related to loss of agricultural land. Again, this was not a reason for refusal. The Council explained at the hearing that it was an issue as this field would be lost from agricultural use, but they did not consider the harm to justify being a reason for refusal. This may have been why no survey of land quality was required by the Council. However, I do note that it was an issue raised by other parties, such as the Parish Council, and so is an issue that I needed to address in the Appeal Decision.
9. This was a matter discussed at the Hearing, though was not a main issue. It is my view that the Council acted reasonably in including the issue in their Statement of Case, especially as it has been raised by other parties. It was also clear that agricultural land loss was not a reason for refusal being introduced at a late stage.
10. In my view, the issues raised by the applicant are not examples of unreasonable behaviour by the Council. For the reasons set out above, I find that there has not been unreasonable behaviour which has caused unnecessary expense in this instance and the application for costs is refused.

Mr S Rennie

INSPECTOR