



Costs Decision

Site visit made on 30 March 2023

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2023

Costs application in relation to Appeal Ref: APP/W1850/W/22/3306614 Land Adjacent to The Old Kilns, Church Lane, Howle Hill, Ross on Wye HR9 5SP

- 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 Jordan for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for residential development of 5 dwellings.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 applicant's case for an award of costs is partly on procedural grounds and partly on substantive grounds. The application for costs on procedural grounds is made on the basis that the Council's decision notice and post committee report failed to correctly reference the NDP as draft or emerging and therefore provided information that is misleading, inaccurate or untrue.
4. The application for award of costs on substantive grounds is made firstly on the basis that the Council's decision attributed too much weight to the Walford Neighbourhood Development Plan (NDP) which at that time had not been submitted for examination. It is also on the basis that the Council failed to substantiate their reason for refusal relating to landscape harm, which went against the Council's landscape officer advice.
5. In respect of the procedural matter, the Council's officer report advised that the NDP was undergoing a Regulation 16 consultation and as such its policies could only be afforded limited weight due to it being at a relatively early stage in its preparation. The Council's post committee decision report (dated 10 August 2022) (post committee report) stated that the site is located outside of the settlement boundary for Howle Hill as identified in the NDP. Although that report does not specify the weight to be afforded to the NDP, reference is made to the Regulation 16 consultation being underway, closing on 31 August 2022.
6. The emerging nature of the NDP was not subsequently referenced in the reasons for refusal in that report or the decision notice. However as it was explicitly referenced in the post committee decision report as well as the

Council's officer report, I do not find that its draft status was deliberately concealed or withheld in an attempt to mislead in the decision-making process. Therefore an award of costs on procedural grounds is not justified in this instance.

7. In respect of the substantive matters, the Council's reason for refusal starts with reference to the appeal site being outside of the settlement boundary as defined in the NDP, and that the site is therefore in an open countryside location. It goes on to identify that there would be landscape harm due to its open countryside location. As reasoned in my appeal decision, the site is currently open pasture and forms a sizeable gap between two dwellings in a rural location. Its existing character is therefore readily appreciable as open countryside. It is reasonable for the applicant to expect the wording in the Council's post committee report and decision notice to have been clearer about the weight applied to the NDP and the settlement boundary at that time. However, regardless of the weight applied to the NDP and settlement boundary, it is not unreasonable for the Council to have considered the appeal site to be located within open countryside and to find harm in that regard.
8. The Council's officer report concluded that the proposal would maintain the character of the area. This was supported by the Landscape Officer's view that having reduced the number of dwellings to a total of three, the development could be designed to integrate with its surroundings. Whereas, the Council Members reached a different conclusion, finding that the proposal would lead to landscape harm. This is a matter of judgment. Therefore the Council Members were entitled not to accept the professional advice of officers so long as a case could be made for the contrary view.
9. The Council submitted a Statement of Case to the appeal to justify the decision to refuse the application. This referenced concern that the proposal would result in harmful urbanisation of the existing setting. It will be seen from my decision that I agree with Council Members and that there were sufficient grounds for refusing planning permission related to the harm to landscape. It follows that I am satisfied that the Council has shown that it was able to substantiate its reason for refusal. As such, the applicant was not put to unnecessary or wasted expense in defending the appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
11. I note that there is also reference to third parties seeking an application for costs against the applicant and the Council due to the Council's decision being unreasonable, and wasted expenditure in addressing the appeal, particularly in light of the NDP. However, evidence that the behaviour of either party has been so unreasonable as to justify an award of costs in favour of third parties is not sufficiently persuasive. Furthermore, the PPG (Ref ID: 16-056-20161210) advises that it is not anticipated that such an award of costs will be made other than in exceptional circumstances. For example when an appeal has been withdrawn without good reason. Moreover, in cases dealt with by written representations, such as this, it is not envisaged that awards of costs involving interested parties will arise.

12. Therefore, in the absence of exceptional circumstances having been demonstrated, an award of costs in favour of third parties is not justified.

Rachel Hall

INSPECTOR