



Costs Decision

Site visit made on 2 May 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2023

Costs application in relation to Appeal Ref: APP/E2001/W/22/3313058 Hagnaby House, 30 Highgate, Cherry Burton HU17 7RR

- 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 West for a full award of costs against East Riding of Yorkshire Council.
 - The appeal was against the refusal of planning permission for four dwellings and site access driveway.
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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. Unreasonable behaviour may be procedural and/or substantive.
3. In summary, the applicant claims that the Council has acted unreasonably in that members of its planning committee were misled about the harm that would be caused by the proposal; that national and local planning policies have been incorrectly applied and the reasons for refusal are without merit. The unreasonable behaviour in these respects relate to how the Council has addressed the following matters:
 - the proximity of dwelling 5 to the development limit boundary;
 - a 'special circumstances' test being applied for interpretation of Policy S4 of the ERLPSD¹ and paragraphs 78 and 79 of the National Planning Policy Framework (the Framework);
 - finding there would be less than substantial harm to the setting of the Cherry Burton Conservation Area (the CA);
 - finding no significant public benefits arising from the proposal; and
 - the conduct of the committee site visit.
4. The Council disputes that it has acted unreasonably.

¹ 2016 adopted East Riding Local Plan Strategy Document

Proximity of dwelling 5 to the development limit boundary

5. Although a proposal may be within a defined development limit and within an allocated site, this does not mean that it will necessarily be acceptable. The Council's officer report explains the importance of the settlement edge to the character and appearance of the area and the setting of the CA. It sets out why dwelling 5 was considered unacceptable within this context. While the applicant may not agree with the assessment in the officer report, this does not amount to advising members of the planning committee incorrectly, or unreasonable behaviour.

Special Circumstances Test

6. Reason for refusal (RfR) one on the Council's decision notice identifies the proposal as failing to meet any of the 'special circumstances' in Policy S4 of the ERLPSD as well as paragraphs 78 and 79 of the Framework. I acknowledge that none of these include a reference to 'special circumstances'. Rather they include a list of circumstances when development may be supported in villages and the countryside in the case of Policy S4, and in rural areas in the case of paragraphs 78 and 79. However, this wording is not ambiguous when RfR one is read as a whole and together with the officer report. The RfR goes on to identify those parts of Policy S4 that the Council considers there to be conflict with and the reasons for this are explained in more detail in the officer report and appeal statement.
7. As set out in my main decision, I am not persuaded that there is a conflict with paragraphs 78 and 79 of the Framework. Nevertheless, in my view, the Council's reference to these paragraphs, which relate to housing in rural areas, would not amount to unreasonable behaviour.
8. The applicant contends that the Council was incorrect in not classifying the proposed access road as 'new and enhanced infrastructure'. This is one of the circumstances in Policy S4 of the ERLPSD where development in the countryside may be permitted.
9. Based on the examples of infrastructure in the supporting text to Policy S4 and the nature of the developments in the policies that are cross referenced, the Council was not unreasonable in considering that an access to a housing site would not fall within the forms of development listed in part C of the policy as 'new and enhanced infrastructure'. As noted in my decision on the proposal, to my mind, the types of development envisaged in this part of Policy S4 are those services and facilities necessary to support the wider Plan objectives which out of necessity may require a countryside location. Furthermore, the submitted evidence demonstrates that the Council has not been inconsistent in its approach to what would not constitute 'new and enhanced infrastructure'.

Less than substantial harm and no significant public benefits

10. The Council's conservation officer's consultation response states 'no objections'. The Council is entitled not to accept the advice of a consultee, as long as a case can be made for a contrary view. The RfR relating to the CA has been substantiated in the Council's officer report and appeal statement. This includes reference to the works required to form the site entrance off Highgate and the prominence of dwelling 5 due mainly to its location, scale and height. In any event, I note that the Council's conservation officer did conclude that there

would be less than substantial harm to the setting of the CA from the proposed access. The Council had reasonable concerns about the impact of the proposal on the setting of the CA, which has taken account of the effectiveness of existing screening measures, and these are based on a conflict with the development plan. On this basis, the Council did not incorrectly engage part C of Policy ENV3 of the ERLPSD or paragraph 202 of the Framework, both of which require a balancing of harm with public benefits.

11. In terms of screening, I note that the appellant's evidence indicates that it was highlighted during the planning committees that the hedgerows in the appellant's ownership could be retained at a minimum height via a planning condition. It also appears that planning committee Members visited the site and so would be able to see it in its wider context.
12. The applicant contends that the officer report fails to set out the public benefits of the proposal. The planning balance in the officer report identifies the planning benefits that were considered to arise from the proposal, although the conclusion was that these would not outweigh the harm to the CA.
13. The effect of a development on the setting of a conservation area and the weight to be given to public benefits is a matter of planning judgement. The RfR relating to the effect on the setting of the CA explains why the proposal was considered to be unacceptable and is framed within the context of the development plan. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. I find this to be the case here.

Committee Site Visit

14. I have no evidence about the Council's approach to committee site visits. I am not able therefore to determine whether not having the case officer present was contrary to any protocol operated by the Council. Nevertheless, in my experience, site visits are an opportunity to assist Members in gaining a better understanding of the proposal in its context. The Council identifies that a committee officer attended, and the case officer was present at the end of the site visit to answer any queries. The fact that the case officer did not attend the full site visit is not evidence of unreasonable behaviour.

Conclusion

15. For the above reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

F Wilkinson

INSPECTOR