



Costs Decision

Hearing Held on 2 May 2023

Site visit made on 2 May 2023

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Costs application in relation to Appeal Ref: APP/A2335/W/22/3312730 South Lakeland Leisure Village, Borwick Lane, Dock Acres, Carnforth LA6 1BH

- 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 Pure Leisure Group Ltd for a full award of costs against Lancaster City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for The development described as "part retrospective application for the change of use of former quarry for the siting of 138 holiday lodges with associated access roads, sales display area, play area car parks and landscaping".
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance 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. It is the applicant's case that the Council failed to produce evidence to substantiate the reasons for refusal, had not determined the application in a consistent manner with regards to the earlier planning permission on the site, and made vague, generalised or inaccurate assertions about the proposals impact, which are unsupported by any objective analysis. With regards reasons for refusal two and three, subsequently withdrawn, it is the applicant's case that the provision of reasonably requested information could have resolved these disputes earlier, reducing the parties' costs.
4. In response, the Council refers to continuous engagement to resolve matters over a prolonged period of time. With regards reason for refusal one, the Council asserts that the sequential test evidence provided by the appellant failed to satisfy the requirements to pass the test and that "given the nature and type of District it is considered that suitable sites for tourism development are bound to exist in sites with a lower risk of flooding". Furthermore, at the hearing the Council referred to planning permission having been granted for 163 caravans/ lodges since 2018.
5. With regards to reason for refusal four and the applicant's suggestion that the Council has not determined the application consistently, the Council states that this is due to the partially retrospective nature of the proposals, thereby the

landscape effects being clearly visible and a reduction in the trees screening the site to the road.

6. The council details that they worked proactively with the appellant to resolve matters and when additional/alternative information was submitted and the relevant consultees satisfied, the refusal reasons were "able to fall away".
7. With regards the sequential test the Council agreed the scope of the test, did not dispute the findings but still asserted that alternative sites at lower flood risk "are bound to exist" and referred at the hearing to consents granted since 2018 without providing appropriate supporting evidence and at no stage identified suitable and available alternative sites. On this basis I am satisfied that the Council has failed to produce evidence to substantiate the reason for refusal and has relied on vague, generalised and unsubstantiated assertions. This is unreasonable behaviour that has led to the applicant incurring wasted expense at the appeal.
8. Turning to the forth reason for refusal and the alleged inconsistency in the determination of the applications on the site, I acknowledge that the part retrospective nature of the proposal and changes to the trees to the road side, in combination with the passage of time and changes to the flood risk status of the site, are material changes that could reasonably cause the Council to reassess their opinion as to the acceptability or otherwise of the appeal scheme with regards to landscape, character and appearance even though I have found otherwise in the determination of the appeal. As such unreasonable behaviour leading to wasted expense has not been demonstrated in this regard.
9. The technical objections relating to reasons for refusal two and three were promptly withdrawn by the Council once the specialist consultees were satisfied with amended and additional information provided by the appellant. There has clearly been ongoing dialogue between the parties to resolve these matters and I am therefore satisfied that unreasonable behaviour leading to wasted expense has not been demonstrated in this regard.
10. To conclude, I am satisfied that it has been demonstrated that the Council acted unreasonably leading to the applicant incurring wasted expense with regards reason for refusal one only.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Lancaster City Council shall pay to Pure Leisure Group Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of reason for refusal one; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Lancaster City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Mr M Brooker

INSPECTOR