



Costs Decision

Hearing held on 26 September 2023

Site visit made on 26 September 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Costs application in relation to Appeal Ref: APP/K2420/W/23/3321670 Land at Lychgate Lane, Burbage, LE10 2DR

- 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 Avant Homes for an award of costs against Hinckley and Bosworth Borough Council.
 - The appeal was against the refusal of planning permission for an outline planning application for the residential development of up to 85 dwellings alongside associated site infrastructure and open space, with all matters reserved except for the means of access.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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. Local Planning Authorities are encouraged, through the PPG, to exercise their development management responsibilities by relying only on reasons which stand up to scrutiny on the planning merits of the case.
3. In this case, the planning application was originally refused for two reasons. The first pertained to the effect of the development upon the landscape; and the second related to the potential effects of the development upon highway safety.
4. The planning application was recommended for approval by Planning Officers to the Council's Planning Committee. The committee report that detailed this recommendation did not suggest that the appeal site was in a valued landscape.
5. Although the Planning Committee was not beholden to follow the advice of the Council's Planning Officers, the relevant reason for refusal, as cited on the Decision Notice, did not identify the surroundings of the appeal site as a valued landscape. In result, the appellant only became aware upon receipt of the Council's Statement of Case, which followed the making of the appeal.
6. Furthermore, the Council's Statement of Case identified a potential breach of Policy DM10 of the Site Allocation and Development Management Policies Development Plan Document (2016). This policy was not listed in the reason

for refusal. In result, the appellant did not have opportunity to respond to this policy when making the appeal.

7. Although I have disagreed with the appellant regarding the weight to be given to the cited policies and whether the policies of the neighbourhood plan supersede the Site Allocation and Development Management Policies Development Plan Document, they are material considerations to which the appellant needed to respond.
8. Therefore, the appellant was required to prepare an additional rebuttal statement in advance of the hearing and, at a late stage, prepare submissions for the hearing in respect of these points. This amounted to unnecessary expense as such preparations could have been made earlier, or through the submission of the appellant's original Statement of Case.
9. In consequence, in refusing the application for planning permission, the Council's reason for refusal was vague and did not provide a succinct summary of its concerns. This meant that fresh evidence was required at a late stage. This resulted in additional expense. This was unreasonable behaviour on the part of the Council.
10. The second reason for refusal pertained to the effect of the proposed development upon highway safety. This reason for refusal was withdrawn at an early stage. Although this withdrawal did not follow the submission of additional evidence, it took place a notable amount of time in advance of the hearing. This meant that the appellant was not compelled to submit additional documentation or prepare for the hearing in respect of this reason for refusal.
11. Therefore, I am unable to find that the approach taken by the Council to be unreasonable in this regard and has not result in unnecessary or wasted expense.
12. The required Section 106 Legal Agreement was not agreed in advance of the hearing. On the day of the hearing, the Council requested further amendments in order to ensure that the agreement fulfilled its requirement to provide mitigation for the effects of the development.
13. Although it is unfortunate that this did not happen at an earlier stage, the Council needed to ensure that the legal agreement was sound and secured the necessary infrastructure for future occupiers of the development. Therefore, the additional drafting would have needed to take place irrespective of the timing of the requested amendments.
14. In this regard, I do not believe that the Council has acted unreasonably that has resulted in wasted or unnecessary expense in respect of the drafting of the Section 106 Agreement.

Conclusion

15. I have found that the Council acted unreasonably by not drafting the first reason for refusal (which related to landscape matters) in a sufficiently precise way which covered all relevant planning policies and identified the appeal site's surroundings as potentially being a valued landscape. This resulted in unnecessary and wasted expense on the part of the appellant. Accordingly, in this regard, an award of costs is justified.

16. However, as I have not found that the withdrawal of the reason for refusal in respect of highway safety and the drafting of the Section 106 Agreement was not unreasonable behaviour that result in unnecessary and wasted expense, an award of costs in respect of these matters is not justified.
17. Therefore, I conclude that an award of costs in respect of the part of the appeal proceedings pertaining to the first reason for refusal is necessary.

Costs Order

18. 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 Hinckley and Bosworth Borough Council shall pay to Avant Homes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect those costs incurred in the appeal process contesting the Council's first reason for refusal. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Hinckley and Bosworth Borough 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.

Benjamin Clarke

INSPECTOR