

Costs Decision

Site visit made on 19 February 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th February 2024

Costs application in relation to Appeal Ref: APP/A1910/W/23/3322942 Paddockside, Tinkers Lane, Wigginton, Hertfordshire HP23 6JB

- 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 Ian Barnard for a full award of costs against Dacorum Borough Council.
 - The appeal was against the refusal of planning permission for the construction of an equestrian training area (menage).
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that the Council behaved unreasonably on three grounds¹, namely because it prevented and delayed development that should clearly have been granted having regard to planning policy and other material considerations; that it did not follow well-established case law; and was inconsistent in its decision making.
4. PPG² lists examples of what type of behaviour may give rise to a substantive award against a local planning authority. This includes where they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; acting contrary to, or not following, well-established case law and not determining similar cases in a consistent manner.
5. In relation to the first ground, the applicant refers to the Council failing to consider permitted development rights as a fall-back position, under which it is asserted that the proposed fencing would be permitted. Although permitted development rights are not specifically mentioned in the Council's delegated report, they were aware of the various components of the development³, including the fencing. The report goes on to set out a holistic analysis and judgement of the development on the openness of the Green Belt, which to my mind is a reasonable approach.

¹ Paragraph 3.1, Applicant's Costs Claim

² Paragraph: 049 Reference ID: 16-049-20140306

³ Listed on page 2, Council's delegated report

6. The fall-back position described did not encompass the entirety of the proposal. As such, it is not shown that had the Council expressly referred to permitted development rights for fencing they would have come to a different finding overall.
7. In addition, the delegated report contains an adequate explanation of the policy context and main issues relating to the proposal. It articulates the Council's judgements in those respects and provides sufficient reasons for them. This is augmented by the Council's written statement for the appeal.
8. I accept that the applicant strongly disagreed with some of those judgements, and particularly the weight to be given to criteria in saved policy 81 of the Dacorum Borough Local Plan (LP). Moreover, as will be seen from my decision, my view differed from the Council's. Nevertheless, it does not follow that the Council failed to substantiate its reasons for refusal. It put forward credible reasons that were specific to the circumstances of the case. Although, less persuasive than the applicant's arguments, I do not find the reasoning advanced in this case was vague, generalised or inaccurate within the meaning of the PPG.
9. Historic England did not raise an objection to the proposal but did make comments such that the setting of the scheduled monument contributed towards its significance and would be changed as a result of the proposal. In that context, it was appropriate and necessary for the Council to reach its own view as decision maker about the effect of the proposal on the designated heritage asset. Clearly there were differences between the main parties on the merits of the scheme, but it is not convincingly shown the Council acted unreasonably in making that judgement even though ultimately, it was not one I shared.
10. The main issues in the appeal called for planning judgement to be exercised in several respects. The Council explained its position, and although I found those judgements to be somewhat severe, I do not consider they lacked credibility.
11. The applicant cites the following case law as not being followed by the Council:
 - *Daventry DC v SSCLG* [2015] EWHC 3459 (Admin); [2016] JPL 578
 - *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385
 - *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102
12. The first case concerned evaluating the weight to be attributed to development plan policies. Although acknowledging the age of saved policy 81 of the LP, the Council refers to paragraph 225 of the National Planning Policy Framework. This states that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. It contends that the saved policy contains detailed local criteria against which to assess equestrian facilities, which is not explicitly covered or prevented by national policy. The matter of what weight to attribute to respective policies requires a judgement to be made by the decision maker. It is not shown that the position of the Council in this respect obviously conflicts with well-established case law.

13. The other caselaw cited relates to what constitutes a 'building' in planning terms. The applicant contends that equestrian paraphernalia does not represent development and the Council was unreasonable to object to these features. However, it is not shown that the Council were under the impression that equestrian paraphernalia amounted to development in itself, rather it was mentioned as a probable consequence of the equestrian training area proposed.
14. Neither am I aware that the Council was required or encouraged by national policies to dissect various elements of a development proposal to consider whether individual aspects amount to development or not. Considering the implications of a development proposal in its entirety is a reasonable approach. Consequently, I am not persuaded that the Council acted contrary to, or did not follow, well-established caselaw.
15. The applicant highlights other development permitted by the Council in the vicinity of the scheduled monument as an instance of inconsistency in decision making. The case highlighted pertains to a replacement dwelling, and hence there was already development at the site. There are further differences with the appeal scheme in the location and nature of the respective proposals. Given these differences, they are not directly comparable and so I am not convinced it amounts to evidence of the Council not determining similar cases in a consistent manner for the purposes of the PPG.
16. Overall, I do not find that the Council behaved unreasonably within the meaning of the PPG. It follows that the applicant was not put to unnecessary expense in testing their position at appeal.

Conclusion

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. As such, the award of costs sought is not warranted.

Helen O'Connor

INSPECTOR