The Planning Inspectorate

Costs Decision

Hearing Held on 28 May 2024

Site visit made on 28 May 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2024

Costs application in relation to Appeal Ref: APP/K2420/W/24/3337087
Kyngs Golf and Country Club, Station Road, Market Bosworth, Leicestershire CV13 0NP

- 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 Statue Homes Limited for a partial award of costs against Hinckley and Bosworth Borough Council.
- The appeal was against the refusal of planning permission for erection of nine single storey timber clad holiday homes with vehicle parking and associated works.

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 or wasted expense in the appeal process.

3. The applicant's application for costs is based on the alleged unreasonable behaviour of the local planning authority ('LPA') and wasted expense for substantive and procedural matters, in respect of the LPAs first reason for refusal ('RfR').

4. The applicant's cost application and final comments on this were made orally at the Hearing. The LPA was afforded a short adjournment to prepare its costs rebuttal which was also provided orally and a written transcript of this was made available at the Hearing.

5. The PPG identifies types of behaviour which may give rise to an award of costs against a LPA. In respect of procedural matters, this includes the withdrawal of a RfR.

6. Substantive grounds for unreasonable behaviour include, preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. To this end, the applicant argues that the LPA misapplied policies of the development plan under RfR1.

7. The appeal scheme was originally proposed as a standalone development for holiday homes. However, the LPA was of the view that the appeal site is

recognised as a tourism and leisure facility in the Market Bosworth Neighbourhood Development Plan ('NDP') because this is part of the Kyngs Golf and Country Club ('the Golf Club'). Accordingly, the LPA argued that a standalone holiday homes development could not be supported within a countryside location without evidence of need and justification. As such, the LPAs position was that the proposal would need to be linked to the re-opening and ongoing operation of the golf course, to comply with the development plan, in principle.

8. Subsequent to the LPAs determination of the application, an appeal decision[1] relating to a separate proposal for development of 9 holiday cabins at the Golf Club was issued. In this decision the Inspector found that: 'the principle of holiday cabins would not conflict with Policies 23 of the CS and DM4 a) of the SADMP, subject to compliance with the other requirements of those policies and the development plan as a whole. In particular, these policies include consideration of matters relating to the effect of a development on the character and appearance of the area in the overall assessment as to whether development in the countryside should be considered sustainable.'

9. Based on the above appeal decision, the LPA withdrew RfR1. However, the LPA maintain that for economic benefits to be realised and to constitute material factor in outweighing any identified harm, there should be a link to the existing golf course use, as the golf course use fundamentally underpins the site's allocation as a tourism and leisure facility.

10. As part of the final Statement of Common Ground, the main parties had agreed the revised position in respect of RfR1. This included a condition requiring that prior to first use of the holiday homes, works to reinstate the 18-hole golf course would be completed and this brought into use. At the Hearing, the applicant confirmed and accepted this approach. As such, there was very little discussion at the Hearing in respect of RfR1.

11. Turning to the applicant's assertion that the LPA misapplied development plan policies in respect of RfR1. The interpretation of planning policy requires a degree of judgement, which is a matter for the decision maker. In this case there is some evidence of how the LPA came to this judgement in its officer report, which includes an assessment of the proposal in light of the development plan and other considerations. Therefore, this in itself does not constitute unreasonable behaviour.

12. Also, the LPA has explained its reason for withdrawing RfR1, which is based on a appeal decision, which was issued subsequent to the LPAs determination of the applicant's planning application. Moreover, upon receiving this appeal decision, the LPA reviewed its position in respect of RfR1 and relayed this to the LPA at the appropriate time in the appeal process. Therefore, in the circumstances, I do not consider the LPAs decision to withdraw RfR1 constitutes unreasonable behaviour.

13. Furthermore, the LPAs decision clearly identifies other harm arising from the proposal. This includes harm in respect of safeguarding protected species and locational harm in respect of character, appearance and landscape requirements of the identified policies of the development plan. As such, the

[1] APP/K2420/W/23/3315336

location of the development was only acceptable subject to the effect on the character and appearance of the area and protected species.

14. Having considered the above matters under my Decision, although I have found in favour of the applicant with regard to character and appearance, I concur with the LPA that the proposal would conflict with the development plan in respect of safeguarding protected species. The harm identified is of overriding concern and for this reason the proposal would not accord with the development plan.

15. Therefore, I am not persuaded that an appeal would have been avoided even if the LPA had not included RfR1.

16. Given all the foregoing, I do not consider the LPAs actions with regard to the substance and withdrawal of RFR1, to be unreasonable. Accordingly, it is not necessary to consider the question of unnecessary or wasted expense. I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a partial award of costs is not justified.

M Aqbal
INSPECTOR