



Costs Decision

Site visit made on 22 August 2024

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2025

Costs application in relation to Appeal Ref: APP/J1860/W/24/3342987 Upper Howsen Farm, Cotheridge, Worcester, Worcestershire, WR6 5LR

- 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 Peter Burgoyne for a full award of costs against Malvern Hills District Council.
 - The appeal against the refusal of planning permission for the installation of 3 no. log cabin styled holiday lodges.
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Decision

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

The submissions by the Appellant

2. The Council advised on a pre-application scheme that timber lodges would be appropriate. That response makes no reference to heritage as an issue.
3. Two different Conservation Officers commented on the submitted planning application, who had differing opinions. One also suggested that landscaping would not be ideal mitigation as it may fail over time, but such an eventuality could be covered and safeguarded by a condition.
4. In 2023 the Council permitted 8 log cabins 60m away from Upper Howsen Farmhouse, which is substantially nearer than the 275m in this proposal. The Council therefore have been inconsistent in their decision making.

The response by the Council

5. The pre-application response recommends smaller lodges with less decking, and whilst suggesting the principle could be acceptable the form and scale would have an adverse impact. A further plan could have been submitted.
6. Both Conservation Officers found less than substantial harm would result. The Council has a statutory duty to consider such harm and then to balance it with the public benefits of the proposal.
7. The landscaping should be regarded as an enhancement not as a means of screening unacceptable development. Due to the length of time needed for the landscaping to establish and mature, the harm would not be mitigated.

8. The two planning applications proposed different schemes and each site has to be considered on its merits. This appeal proposal would encroach further into the rural landscape and the cabins would not be identical in size and appearance.

Reasons

9. 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.
10. The 1990 Act¹ places a statutory duty to consider the Listed Buildings. The Officer report acknowledges they warrant great weight, which shows the Council had this requirement in mind at determination.
11. The Appellant's own heritage assessment report² found that less than substantial harm would result. Thus, whilst this was a low level nonetheless, there was still some harm which had to be considered.
12. The extent to which the proposal would detract and therefore harm a setting is a matter of judgement, rather than a precise science. Similarly, the exercise of balancing the harm and public benefits is also a matter of judgement. It is therefore understandable that the Council Officers had differing opinions on both the impacts and the balance of the benefits of the proposal. Such differences are not unreasonable.
13. Whilst pre-application discussions are helpful, they are not binding on the Council and the outcome of the planning application process cannot be guaranteed. In any event the pre-application response included suggested amendments.
14. I note the other proposal was close to a designated asset and that is an important consideration. However, the setting of the heritage assets and the landscape will vary with other very particular characteristics, including whether the land is part of its setting and how it contributes, as well as how it is experienced: each site will have its own very particular characteristics.

Conclusion

15. For the above reasons I conclude that the Council has not acted unreasonably, and that the applicant has not been put to wasted time and expense in pursuing the appeal. Therefore, an award of costs as described in the Planning Practice Guidance is not justified.

John Longmuir

INSPECTOR

¹ The Planning (Listed Buildings and Conservation Areas) Act 1990

² Paragraph 5.3