



Costs Decision

Site visit made on 17 February 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Costs application in relation to Appeal Ref: APP/L3245/W/21/3273383 Land adjacent Links Green, Hinstock Church to Ellerton Junction, Church Street, Hinstock TF9 2NH

- 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 Dan and David Culligan for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for 10 static caravans with layout, modified road access, amenity land, play area and office building.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG states that the circumstances when the behaviour of a local planning authority ('LPA') might lead to an award of costs can either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
4. The applicants' application for costs is based on the alleged unreasonable behaviour of the LPA and wasted expense, for the reasons considered below.
5. The PPG provides examples as to when a substantive award of costs may be made against a LPA. These 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; and failure to produce evidence to substantiate each reason for refusal on appeal.
6. The applicants' application was considered at the Northern Planning Committee on 9 February 2021. Although the officer recommendation was to approve the application, subject to conditions, Members refused the application on two grounds, as set out in the LPAs decision dated 24 February 2021.
7. I have identified that the two main issues arising from that decision as the effects of the proposal on highway safety and the character and appearance of the area.

8. Notwithstanding the advice of the LPAs officers and consultees, Planning Committees are not bound by a professional recommendation and are entitled to depart from this based on the facts of the case and planning judgment. However, this is not an unqualified right, as members of a planning committee must be able to properly substantiate any concerns identified.
9. In respect of highway safety, the planning application was supported by a Transport Statement prepared by Modal Highway Consultants Limited. This found that the proposal would have a negligible impact on the local highway network.
10. WSP UK Ltd undertook a technical appraisal of the planning application and the supporting information on behalf of the Local Highway Authority, and in their response dated 15 September 2020, advised that there was no objection – to the proposal subject to the development being constructed in accordance with the approved details and conditions.
11. At appeal, although the LPA has identified that the proposal would result in an increase in traffic and highlighted deficiencies in the existing highway network, there is no substantive technical evidence to support its allegation that the proposal would lead to highway safety issues, sufficient to warrant refusal of the planning application. Therefore, I consider that the LPAs stance in respect of this particular issue to be unreasonable.
12. Turning to the second issue, this alleges that the proposed development would have an adverse visual impact on the landscape and this will not be satisfactorily mitigated by the landscaping proposed.
13. To show that the proposal would be acceptable in terms of its landscape and visual effects, the application was supported by a Landscape and Visual Appraisal Report (LVAR).
14. The LPA also commissioned an independent review of the LVAR which was conducted by ESP. Notwithstanding that the LVAR was considered to be a proportionate, clear and evidence-based manner in compliance with the relevant guidance. According to the LPAs report to the Northern Planning Committee, the review undertaken by ESP found that the effect of the proposal from the view northwest towards the site from Ellerton Road would be 'slight negative' on completion of the development as this would involve part removal of the hedgerow to provide the improved visibility. Further, that the development would also initially have a 'slight negative' impact on the landscape character and its surroundings mainly in a western direction, although the new planting would result in a long term 'positive' effect on the landscape character.
15. As already stated, committees are not bound by a professional recommendation and are entitled to depart from this based on the facts of the case and planning judgment.
16. In particular, and notwithstanding the specific advice from landscape specialists, the members' consideration of the effects of the proposed development on character and appearance involves some subjective analysis having regard to the context of the site, the proposal and the development plan and any other material considerations. Some members would have local knowledge of the site and area.

17. Also, and as already stated members came to a view that the alleged adverse visual impact on the landscape would not be satisfactorily mitigated by the proposed landscaping. This requires a degree of subjective planning judgement, particularly given that the landscape scheme is illustrative.
18. The LPAs reason for refusal refers to Policies CS6 and CS16 of the Shropshire Local Development Framework: Adopted Core Strategy. March 2011. Amongst other things, these policies seek to deliver development which is sensitive to Shropshire's intrinsic natural qualities with appropriate landscaping taking into account the local context and character.
19. Therefore, even though in allowing the appeal I have found in favour of the applicants' I am satisfied that the LPAs decision, insofar as this relates to the issue of character and appearance is complete, precise, specific and relevant to the proposal. Furthermore, the LPAs conclusions about the effects of the proposal are supported by some analysis set out in the appeal statement. Accordingly, in my view the LPAs stance in respect of this issue does not amount to unreasonable behaviour.
20. Nonetheless, the LPA acted unreasonably with regard to the refusing the application on grounds of highway safety. However, to make an award of costs I need to be satisfied that this matter resulted in unnecessary or wasted expense in the appeal process.
21. Irrespective of the stance taken by the LPA in respect of highway safety, its reason for refusal also related to the effects of the proposal on the character and appearance of the area. Therefore, while I cannot be certain, it seems likely that even if the LPA had considered the proposal to be acceptable in terms of highway safety, this would not have made any difference to the Committee's decision to refuse the planning application. Therefore, an appeal could not have been avoided. Also, the applicants appeal evidence in dealing with the issue of highway safety largely refers to the submissions made as part of the planning application and do not rely on any substantive new evidence.
22. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal
INSPECTOR