



Costs Decision

Hearing held on 11/12 July 2012 and 9/10 April 2013

Accompanied site visits made on 12 July 2012 and 11 April 2013

by I Jenkins BSc CEng MICE MCIWEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 July 2013

Costs application in relation to Appeal Ref: APP/T2350/A/12/2168289 Land adjacent to Dudland Croft, Gisburn Road, Sawley, Clitheroe, BB7 4LH

- 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 G Myerscough & Mrs M Myerscough for a full award of costs against Ribble Valley Borough Council.
 - The hearing was in connection with an appeal against the refusal of the Council grant outline planning permission for the erection of a country house hotel and spa.
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Decision

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

Reasons

2. The appellants' cost application and the response of the Council were made entirely in writing. In support of their application, the appellants cited paragraphs B18, B20 and B23 of Circular 03/2009. Whilst my attention has also been drawn to a number of previous appeal costs decisions¹ related to schemes on other sites, the circumstances in those cases are not directly comparable to those in the case before me.
3. The Circular 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.
4. I have concluded that the appeal should be dismissed and it follows that the Council has not prevented or delayed development which should clearly be permitted. Nonetheless, I shall consider each of the reasons given by the Council for refusal.
5. The Council's first reason for refusal indicated that by virtue of the design, scale and massing of the proposed development, the scheme would cause significant and adverse changes in the character of the area to its visual detriment. It also cited local and national policy. This position was contrary to the advice of its planning officer, who concluded that the impact of the scheme on landscape character and the setting of the location would be acceptable. Nor was it consistent with the findings of the Landscape and Visual Impact

¹ Hearing document nos. 13 and 27.

- Assessment (LVIA) submitted in support of the planning application by the appellants. Furthermore, having reviewed the LVIA, neither Natural England (NE) nor Lancashire County Council's Senior Landscape Architect (LCCSLA) objected to the scheme. The Council's countryside officer did not object to the scheme either.
6. Nevertheless, in support of this reason for refusal the Council's submissions to the Hearing provided evidence concerning the characteristics of the locality, with reference to the Ribble Valley Landscape Character Type *Lowland Fringe Farmland*, which identifies positive landscape elements including an open and rural landscape, with which it considered the proposal would conflict due to its design, scale and massing. Whilst country houses, surrounded by formal park land and well managed estate land, are also a feature of the Lowland Fringe Farmland type, the Council illustrated this form of existing development by reference to the Stirk House Hotel, in comparison with which the proposed building complex would be situated much closer to the A59. The Council's statement also made detailed reference to local and national policy.
 7. The Council's position on this matter was not consistent with that of NE, LCCSLA or its own countryside and planning officers. However, contrary to the view of the appellants, evidence had been submitted to the Council which supported its stance, in the form of the JWPC Town Planning & Development Consultants letter of objection to the planning application, which included a critique of the LVIA by Chartered Landscape Architects and concluded that the scheme would have a significant adverse effect on the character of the landscape. Furthermore, the specific conclusion drawn by the LCCSLA related to the impact on the AONB, not the wider area, and although he accepted the LVIA, that document did not deal with the visual impact of the scheme on receptors using local footways, which the Council has cited as a concern.
 8. The Circular indicates that in circumstances such as this, where the outcome of an appeal turns on matters of judgement concerning character and appearance, it is unlikely that costs will be awarded if realistic and specific evidence is provided about the consequences of the proposed development (B18). Whilst I do not agree with some of the arguments put by the Council in support of its first reason for refusal, I am satisfied that it has provided, through its written and oral submissions to the Hearing, evidence to substantiate it (B16). This evidence provides a respectable basis for its stance and reasonable grounds for not following its officer's *Recommendation for the Planning and Development Committee* and the views of consultees (B20/B23). In my appeal decision, I have concluded that the proposal would cause material harm to the character and appearance of the area.
 9. The Council's second reason for refusal (RFR2) indicated that, due to its isolated location, the proposal would result in over reliance on car usage, as opposed to more sustainable forms of transport, thereby adversely impacting on the overall transport infrastructure in that location. Whilst the Highway Authority raised no objections to the scheme on highway safety grounds, it observed that the isolated location of the site and the lack of public transport and pedestrian links are significant factors in assessing the accessibility of the site for non-car journeys and the overall sustainability of the development.
 10. Insofar as this reason for refusal indicates that the scheme would rate poorly in terms of accessibility by sustainable modes of transport, it has been supported by the Council's Hearing statement, with reference to Policy and analysis of the

limited potential for accessing the site by public transport. I have come to a similar conclusion in my appeal decision.

11. However, the Council's Hearing statement does not make clear its concerns with respect to the 'impact on transport infrastructure at this location' and at the Hearing it was unable to clarify its position in that particular regard. By making this vague and generalised assertion about the proposal's impact and not supporting it by objective analysis amounts to unreasonable behaviour on the part of the Council.
12. I therefore find that unreasonable behaviour, as described in Circular 03/2009, has been demonstrated and that this is likely to have resulted in the appellants incurring expense unnecessarily in dealing with that element of RFR2 at appeal. A partial award of costs is justified, limited to those costs involved in dealing with the Council's unsupported assertion that the scheme would '*impact on the overall transport infrastructure at this location to its detriment*'.

Costs Order

13. 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 Ribble Valley Borough Council shall pay to Mr G Myerscough & Mrs M Myerscough, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the Council's assertion that the scheme would '*impact on the overall transport infrastructure at this location to its detriment*'.
14. The applicant is now invited to submit to Ribble Valley 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

I Jenkins

INSPECTOR