
Costs Decision

Inquiry Held on 9 May 2023; 26, 27 and 28 September 2023; 26, 27 and 28 November 2024 and 6 December 2024

Site visit made on 28 September 2023 and 29 November 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 8 January 2025

**Costs application in relation to Appeal Refs: APP/V3120/C/21/3273724, APP/V3120/C/21/3273725 and APP/V3120/W/21/3273729
Land at Maleficent Meadows, Baulking Lane, Baulking, Oxfordshire SN7 8NR**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Riley Pidgley for a partial award of costs against Vale of White Horse District Council.
 - The Inquiry was in connection with an appeal against two enforcement notices alleging, without planning permission, the material change of use of a former mineral working site which has since been restored to a condition suitable for agriculture, to a mixed use, namely i) the stationing of a mobile home for residential use; and ii) the keeping and breeding of cats and dogs for the purpose of sale; the undertaking of building, engineering and other operations on the Land; and against the refusal of planning permission for the change of use of former mineral workings land to a combined pedigree dog and cat breeding facility including the stationing of a temporary dwelling and associated development.
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Decision: the application is refused

The submissions for Mr Riley Pidgley

1. The appeal site's alleged location within a valued landscape and within the setting of the North Wessex Downs Area of Outstanding Natural Beauty (now National Landscape) was not raised by the Council in Enforcement Notice A, Enforcement Notice B (Appendix A6), the Expediency Report or the Decision Notice and Officer's Report relevant to the section 78 Appeal, all of which were produced in 2021. Despite this, some two years later, these issues were raised on behalf of the Council in the Proof of Evidence of Mr Stephen Jupp and Landscape and Visual Consultation Report by Mr Ian Dudley, received by the Appellant on 18th April 2023.
2. The Council, via their agents (albeit probably unknown to the Council), in raising these issues have effectively introduced a further reason for refusal and/or reason for issuing the Enforcement Notices, over two years later. The appellant has been put to additional cost in responding to these allegations. This clearly amounts to unreasonable behaviour pursuant to the Planning Practice Guidance (PPG) which provides such can include "introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen".

3. The Council, via their agents, have also failed to substantiate their position with objective, reliable analysis. This amounts to unreasonable behaviour pursuant to the PPG which includes "inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis."
4. It cannot be the Council's reasonably held belief that the appeal site is so situated and there is an abundance of information in support of this position:
 - the appeal site's alleged location within a valued landscape and within the setting of the North Wessex Downs National Landscape was not raised by the Council in Enforcement Notice A, Enforcement Notice B, the Expediency Report or the Decision Notice and Officer's Report relevant to the section 78 Appeal.
 - the Officer's Report relevant to the section 78 Appeal confirms that "The Landscape Officer has submitted detailed comments in light of this proposal in terms of the specific landscape impact." It is therefore clear that full consideration was given by the Council's Landscape Officer to the development's alleged landscape impact, but they did not conclude that the appeal site was either within a valued landscape and within the setting of the North Wessex Downs Area of Outstanding Natural Beauty.
 - these issues were not raised by the Council in relation to a gypsy and traveller pitch known as Lakeview, approximately 100m to the north of the appeal site either in the relevant enforcement notices, relevant expediency report, consultation response from the Council's Landscape Officer Hazel Osborne CMLI dated 23 June 2022, or the Hearing Statement. The Inspector is requested to note that according to the PINS website this was submitted by the Council on 22 March 2023, less than one month prior to the appellant's receipt of Proofs of Evidence in the given appeals.
 - these issues have also not been raised by the Council within an application before the Council, for the "Change of use from lake created by mineral extraction to a coarse fishing (leisure) venue" pursuant to reference P23/V2021/FUL relating to the lake adjacent to the appeal site. Pre-application advice was obtained where consideration was given to landscape matters and the officer does not identify that the site, which is much larger than the appeal site, is in the setting of the AONB. Nor did the Officer's report for the determination of that application (handed in by the Council on 26/11/24), produced in 2024, contend that the area was a valued landscape or in the setting of the National Landscape. In fact, the officer, specifically excludes the applicability of Policy DP35 Limb 2, which addresses whether there is harm to the North Wessex Downs National Landscape or its setting.
5. Documentation produced by the Council, as opposed to their agents, both pre and postproduction of the Proof of Evidence of Mr Stephen Jupp and Landscape and Visual Consultation Report by Mr Ian Dudley, make it clear that the Council are not of the view that the Appeal Site is located within a valued landscape or in the setting of the National Landscape. The purpose of Council employing external consultants in appeals is to defend the reasons for refusal identify by the Council, not to invent new ones. The Council are responsible for the actions of their experts and their failure to exert reasonable control over them has resulted in the introduction of a new refusal reason at a late stage in the

- proceedings, which it is clear, on objective analysis, that the Council do not consider has merit. This must amount to unreasonable behaviour.
6. Similarly, in allowing their consultants to proceed with these lines of argument which are not advanced in other developments in the area, including other gypsy and traveller developments, the Council are clearly failing to determine and deal with cases in a consistent manner. This amounts to unreasonable behaviour pursuant to the PPG which includes "not determining similar cases in a consistent manner".
 7. As a result of the Council's unreasonable behaviour, the appellant has incurred costs responding to the allegations that the appeal site is located within a valued landscape or in the setting of the National Landscape. This includes but is not limited to the costs of the landscape rebuttal and half a day's attendance at the inquiry.

The response by Vale of White Horse District Council.

8. In relation to his application the first point to make is, not only has the Council's behaviour on landscape matters been reasonable, it has been exemplary. The Council issued the Enforcement notices and refused permission partially on the basis of significant landscape harm – the officer delegated report on page 8 refers to development detracting from views from the Public Right of Way towards the North Wessex Downs National Landscape.
9. When the matter went to appeal the Council instructed an experienced landscape architect with an exemplary record in addressing landscape matters on appeal. That Landscape architect as part of a transparent landscape assessment, using GLVIA3 and TGN 02/21 has not only determined that the landscape in question is within the setting of the National Landscape (something Mr Green accepted!) and valued. He has also considered the applicable test in the Framework relating to development within the setting of a National Landscape and the need to sensitively locate and design that development to avoid or minimise impacts on the National Landscape. His conclusions on both issues are transparent and unassailable.
10. After the evidence has been heard, it is unquestionably the case that there is significant landscape and character harm to a valued landscape and to a National Landscape by development within its setting. But more importantly, had the Council not instructed a landscape architect the Inspector would have had no professional or reliable evidence on landscape, valued landscape or development within the setting of a National Landscape and would have not known that the application site is so situated.
11. The suggestion by Mr Green that the landscape is not valued is even more remarkable given that the landscape area within which the site sits has already been assessed by an Inspector on appeal as being part of a valued landscape, (by Inspector Murray in the Old Canal appeal). In the circumstances any suggestion that the landscape is not valued is untenable and the costs application is itself absurd.
12. Moreover and in any event the application is fundamentally flawed because:

- (a) Mr Dudley has not disagreed with any previous Officer comment, because they have been silent on the matter.
 - (b) the valued landscape and National Landscape points do not introduce a new reason for refusal, rather they substantiate the existing landscape reason for refusal currently in place.
 - (c) the appellant did not go to the expense of hiring a landscape expert to challenge his evidence, rather this was addressed by Mr Green as part of his existing involvement in the appeal.
13. There was no unreasonable behaviour by the Council. Rather the Council behaved impeccably by instructing a professional to support the reason for refusal on landscape.
14. In respect of any assertion by Mr Green that he has incurred wasted costs in any event, that is equally absurd. His “evidence” on landscape is merely an incorrect statement on the concept of the setting of a national Landscape, in which he deliberately kept relevant material from the Inspector and a failure to actually provide any actual assessment of landscape value.

Reasons

15. The 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. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG states that the right of appeal should be exercised in a reasonable manner and goes on to provide example of unreasonable behaviour which may result in an award of costs against a local planning authority. As the applicant points out, these examples include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen, and inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis.
16. The location of the appeal site within a valued landscape and within the setting of the North Wessex Downs Area National Landscape was first raised by the Council in the Proofs of Evidence of Mr Jupp and Landscape and Visual Consultation Report by Mr Ian Dudley. This would have been some four weeks prior to the opening of the Inquiry. In my view, that was ample time in which to consider these issues, bearing in mind that Mr Green would already have been thoroughly familiar with this landscape as a reason for issuing the enforcement notices and for refusing planning permission.
17. In any event, it would be quite wrong to treat the issues of valued landscape and setting of a National Landscape as the introduction of new reasons for refusal. The impact of the development on the character and appearance of the area was already a reason issuing the enforcement notices and refusing planning permission. That issue was therefore already before me as a main issue arising from these appeals. Whether or not the landscape constitutes a valued landscape and the development harmed the setting of the National Landscape was therefore merely an extension of that main issue.

18. The Council also makes a valid point insofar as not providing evidence in relation to those issues would have meant that I may not have been aware of those important landscape designations. As a result, my Decision in relation to these appeals would have been compromised to the extent that it would have been vulnerable to challenge. This on the basis that I had not taken into account relevant matters that ought to have been taken into account. That would have been on nobody's best interests. The Council was therefore entirely correct to bring these matters to my attention. In fact, it had a duty to do so.
19. I recognise that the matter was raised relatively late in the day (at least in relation to valued landscape). But that did not itself cause an adjournment. The Inquiry was adjourned on the first day for an entirely different reason. This afforded the applicant's agent a period of nearly five months before the Inquiry resumed, which was ample time in which to produce rebuttal evidence on this issue.
20. The applicant contends that the Council, via their agents, have failed to substantiate their position with objective, reliable analysis. That is a quite remarkable statement to make. Nothing could be further from the truth.
21. It is clear to me that Mr Dudley, the Chartered Landscape Architect who produced the Council's evidence on this matter, fully understood this landscape and the wider role that this landscape plays in the character of the District as a whole. He had methodically analysed and rigorously assessed the impact of the development on this landscape in accordance with the best practice guidance in GLVIA3 and TGN 02/21. Overall, I found his evidence to be compelling: on the few occasions where I took a different view to Mr Dudley, that was purely on a matter of subjective judgment. In every respect, the Landscape and Visual Consultation Report produced by Mr Dudley's was an objective, reliable and I would add exemplary analysis of this landscape.
22. It is true that the issues as to whether this is a valued landscape and the setting of the National Landscape were not raised in the Council's written evidence in relation to the gypsy and traveller pitch known as Lakeview. But they were raised at the Hearing itself. In that case, following a short adjournment to enable the appellant's agent to consider the matters, these issues were dealt with expeditiously as an extension to main issue in relation to the effect of the development on the character of the area.
23. Moreover, the Council's landscape evidence at that Hearing was given by Ms Hazel Osbourne, the Council's own Landscape Officer. This immediately puts to the sword any suggestion that the views expressed by Mr Jupp and Mr Dudley at this Inquiry were purely their own views and not shared by the Council. They clearly are.
24. I do not know why the issues surrounding valued landscape and the setting of the National Landscape were not cited in the reasons for issuing the enforcement notices and refusing planning permission, either in relation to this site or to Lakeview. I do not know whether Mr Jupp and/or Mr Dudley liaised with Ms Osbourne prior to producing their respective Proofs of Evidence: given the commonality of the evidence at both events, I suspect they did. Neither do I know why evidence on these issues was not set out at Statement stage in either case. However, I do know that having been brought to my attention, it was incumbent upon me to consider these issues in both cases.

25. The applicant also refers to the issues surrounding valued landscape and the setting of the National Landscape not being raised in relation to the planning application for the change of use of Baulking Lake to a coarse fishing (leisure) venue (Council Ref: P23/V2021/FUL). However, notwithstanding that Baulking Lake is much larger than the appeal site, that proposal was for an entirely different form of development to that subject to these appeals. It was entirely a matter for the Council to determine that application as it saw fit. Because of the significant differences between that proposal and the development on the appeal site, I do not perceive the Council's approach to that application as being in any way inconsistent with its approach to these appeals. On the other hand, I note that the Council was entirely consistent in the evidence before me in relation to these appeals and those at Lakeview.
26. I conclude that the Council has not acted unreasonably in relation to these appeals. The PPG is very clear: 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. In this case, at the very least the first of those conditions has not been met and an award of costs is therefore not justified.

Paul Freer
INSPECTOR