DMH Stallard

Application for an Award of Costs

APP/Z3825/W/25/3370975

Little Wantley - The Chalet

APP/Z3825/W/25/3370974

Little Wantley - The Cruiser

An application is made for a full award of costs against the Local Planning Authority in relation to both of the above appeals.

An award if usually made if;

(i) one of the parties has applied for costs at the appropriate stage and
(ii) a party has behaved 'unreasonably'; and
(iii) this 'unreasonable' behaviour has caused the applicant for costs to incur or waste expense unnecessarily.

The word "unreasonable" is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.

Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

In this case, unreasonable behaviour has led directly to unnecessary appeals to the Secretary of State. This is due to the LPA being unable to produce evidence to support the stated single reason for refusing each planning application, despite requests to do so both at application and appeal stages.

The single reason for refusal of both applications was;

'The development when considered cumulatively with other development on the site, would result in a material intensification of activity within the countryside, which would detract from the informal character and ambience of the countryside location, contrary to Policy 26 of the Horsham District Planning Framework (2015).'

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The delegated officer reports for both applications states;

The proposal would increase the number of vehicle movements and general activity on the site, which would result in a cumulative intensification that would detract from the informal character and ambience of the countryside location. Furthermore, there are concerns that the cumulative number of resulting holiday-let units, when considered alongside the ancillary accommodation, would compete with and alter the ambience and character of the residential property. Specifically, there are several annexes/guest accommodation and holiday-let accommodation on the site, which when considered cumulatively, is considered to result in a change of character to the residential site and a level and intensification of activity that would detract from the informal character and ambience of the countryside location.'

The NPPG guidance is that Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications, or by unreasonably defending appeals. Examples of this are set out in the guidance and it is considered that the following are applicable in this case:

- 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.
- failure to produce evidence to substantiate each reason for refusal on appeal
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
- not determining similar cases in a consistent manner.

We will not repeat the full merits of the appeal in this application for costs. However, taking the four bullet points set out above in turn;

1. 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.

   The provision of visitor accommodation within the countryside is essentially, in line with Policy 26, it helps to support the quiet informal recreational use of the local area (with no harm to the surrounding landscape) and the sustainable development of rural areas through support for local businesses and tourism, in accordance with Policy 1 and the NPPF. The LPA have failed to take a wider view of policy – the 'full basket' of policy and focussed solely on policy 26, seemingly without taking proper account of Policy 11. Furthermore, it is our view

that the appeal scheme complies with policy 26, it being small in scale, providing for the quiet enjoyment of the countryside, enabling sustainable development in a rural area. The LPA appear to focus their concern on a potential cumulative impact. In order to fail the policy test, set out in Policy 26 the development would have to 'individually or cumulatively result in a significant increase in the overall level of activity in the countryside.' In our view no reasonable LPA could come to the view that there would be a significant increase in activity. The Council have misapplied the relevant policy situation, the proposed development clearly being one which should have been approved.

2. Failure to produce evidence to substantiate each reason for refusal on appeal.

   The Council have produced no evidence to substantiate the stated reason for refusal. Having indicated that they would produce a statement of case at questionnaire stage, nothing has materialised. Consequently we are left with only the reason for refusal and paragraph reproduced above. The highway authority consider that traffic impacts to be acceptable. The amount of additional traffic will be minimal. The likely traffic movements would be a single vehicle in/out once or twice a day at most. This level of activity would have no harmful impact on the character or ambience of the countryside, as alluded to be the LPA. The holiday lets themselves would not generate any noise such as to impact on the character of the countryside. The LPA have failed to produce any evidence to substantiate the reason for refusal.

3. Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

   The officer report repeatedly mentions 'potential to increase activity' and 'concerns' that the additional holiday lets would alter the ambience and character of the rural area/residential property. Those concerns are not evidenced or explained. The traffic movements would be very limited and the noise from each holiday let would be minimal. The LPA have failed to substantiate the 'harm' they consider may result. All evidence and commonsense points to the fact that the additional holiday lets would have no material impact on the character of the locality. It is, of course, relevant to consider that the use of the structures, as holiday lets, has been continuing for several years without complaint. The Chalet has been used as a holiday let since July 2019, some six years. The Cruiser has been constructed more recently, but has been in situ since July 2022. The Cruiser has been used as a holiday let since July 2022, some three years. Consequently, it is difficult to understand how the LPA consider that there is 'potential harm'. There have been no complaints that we are aware of and the (in our view non-existent) 'harm' has been occurring for several years. There are no objections from the Highway Authority, or any neighbour (in fact a petition of over 800 people and 21 letters of support). No objection from any consultee including the Parish Council.

4. Not determining similar cases in a consistent manner.

   Accepting that each scheme needs to be considered on it's merits, the appendices to the planning appeal statement list many other applications which the LPA have determined positively over recent years.

In conclusion the LPA have failed to substantiate the reason refusal and a full award of costs is requested in relation to both appeals.

Peter Rainier MRTPI

Director of Planning

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