



Costs Decision

Hearing held on 15 December 2010
Site visit made on 15 December 2010

by **David Morgan BA MA MRTPI IHBC**

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

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Decision date:
21 January 2011

Costs application in relation to Appeal Ref: APP/ F1610/A/10/2136124 Land at Forestry Commission, Westonbirt Arboretum, Westonbirt, Tetbury, Gloucestershire GL8 8QS

- 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 Ms Miranda Winram, Forestry Commission, for a full award of costs against Cotswold District Council.
- The appeal was made against the refusal of planning permission for enhancement of Westonbirt Arboretum to include a revised Main Visitor Car Park, Coach and additional Car Parking, Wood Store, Welcome Building, Tree Walkway and Heritage Tower, alterations to the internal access arrangements, associated landscaping and works.

Decision

1. I allow the application for costs in the terms set out below.

The submissions for Ms Miranda Winram, Forestry Commission

2. The costs application was made in writing with the following additional points made orally.
3. In respect of policy HE10 of Planning Policy Statement 5 *Planning for the Historic Environment (PPS5)*, (Consideration of applications for development affecting the setting of a designated heritage asset) the Council have not set out the basis of their judgement, in the form of a cost-benefit analysis, of assessing the identified harm caused by the proposed development against its wider benefits. The Council has not taken account of or demonstrated how the proposals are contrary to Government policy in this respect.

Response by Cotswold District Council

4. The response was made in writing and orally at the Hearing.
5. In response to the matter of policy HE10, the Council assert that they have made the necessary assessment and have found that the harm caused by the proposed development is not outweighed by the other benefits of the scheme.

Reasons

6. Circular 03/2009 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.
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7. The core of the appellant's application for costs is that the Council have behaved unreasonable insofar as they have prevented development that clearly should be permitted, having regard to the development plan and Government policy and that the Council has failed to substantiate their reasons for refusal with evidence framed in the context of the development plan and Government policy. These assertions are made with reference to paragraphs B15 and B16 of the Circular.
8. Whilst the Council's single reason for refusal acknowledges the proposed welcome building is well detailed and employs natural materials, it asserts 'the design is mediocre' lacking in the necessary 'high quality and innovation' resulting in an uninspiring building which fails to do justice to the status of the arboretum. The core of the Council's objection to the building is that it is simply not good enough for the international status of the site, the deficiencies of the design being defined by analogy to a 'utilitarian agricultural shed'. The Council define 'high quality and innovation' through reference to the Savill Building, the visitor reception facility at Great Windsor Park, (designed by the same architects who prepared the appeal proposal) and deemed by the Council to be a worthy benchmark for such proposals within the arboretum site.
9. However, whilst the Council emphasis the cultural and heritage significance of the arboretum and registered park, they do not set out in specific terms why the proposed building is inappropriate to its context. The nebulous aspiration to 'high quality and innovation' or the broad reference to the mediocrity of the design, supported by pejorative analogy, do not constitute a complete, precise and specific register of the perceived deficiencies of the application proposal. Moreover, the evidence presented in the Hearing Statement sets out the critique of the design in paragraphs 5.3 – 5.9, only the first two of which deal briefly with form, scale and landscaping. The remaining paragraphs set out a critique of the detailing of the building, new evidence which contradicts the assertion in the reason for refusal that 'the welcome building would be well detailed and would use natural materials'.
10. Furthermore, the reason for refusal and the evidence presented in the Hearing Statement do not convincingly or substantively link the Council's objections to the design to the policies of the development plan. There is no explanation as to why the proposed building fails to relate well to the existing development on the site as required by policy 19, nor is it satisfactorily explained why the proposal fails to respect the character, appearance and local distinctiveness of the District in accordance with policy 42. No reference is made in the reasons for refusal of the proposals being contrary to the principles set out in the Cotswold Design Code, adopted Supplementary Planning Guidance, nor is reference made to policy 40 of the Local Plan, which requires compliance with it. When such behaviour is assessed against paragraph B16 of the Circular, it is demonstrably unreasonable. Moreover, the Council's judgement on character and appearance, local distinctiveness and design are not supported by realistic and specific evidence about the consequences of the development, its effects, and the harm it would cause. Again, when such behaviour is considered in relation to paragraphs B18 and B19 of the Circular it is found to be unreasonable.
11. The reason for refusal also states the proposals would be contrary to PPS5, though no specific reference to policy is made. The Council do not identify

substantial harm and cite policy HE9, (HE9.1) nor do they identify less than substantial harm (HE9.4). The Hearing Statement of the Council does however refer to policy HE19 (a typographical error that remained uncorrected), the intended reference being to policy HE10 referred to above. No evidence is presented in support of an argument that the proposals would fail to preserve those elements of the setting of the asset that make a positive contribution to its significance. Moreover, and equally important, there is no evidence that the Council, having identified that harm, have gone on to weigh such harm against the wider benefits of the application as HE10 requires. This critical exercise is absent in the e mail serving as the delegated officer report of the 26 August 2010 and from the Hearing Statement submitted in response to the appeal. In view of the undoubted benefits the whole development proposal would bring across the piece, in terms of the visitor experience and specifically the restoration of the Downs area to pasture from the existing intrusive car parking, this is a significant failing in the Council' approach to the assessment of the proposals. Ignoring national policy here (as paragraph B29 of the Circular indicates) compounds the unreasonable behaviour of the Council, who have failed to substantiate their case and so provide a respectable basis for the authority's stance.

12. For all the reasons set out above therefore, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

Costs Order

13. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Cotswold District Council shall pay to Ms Miranda Winram, Forestry Commission, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
14. The applicant is now invited to submit to Cotswold District 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.

David Morgan

INSPECTOR