
Costs Decision

Site visit made on 29 July 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2019

Costs application in relation to Appeal Ref: APP/K3605/19/3228083 Apps Court Farm, Hurst Road, Walton-On-Thames KT12 2EG

- 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 S MacGregor for a partial award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for "A single small Britwind wind turbine (25m to tip) on land at Apps Court Farm, KT12 2EG".
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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.
3. The Guidance indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal. The guidance also sets out that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs.
4. The appellant identifies that the National Planning Policy Framework (2019) (the Framework) and the Planning Practice Guidance both clearly state that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. The appellant's position is that the Council received clear advice from the National Air Traffic Services (NATS) that it would be possible to provide mitigation to deal with the effect of the proposal on radars for Heathrow and the failure of the Council to deal with this matter by condition amounts to unreasonable behaviour. Therefore, the appellant is seeking a partial award of costs.
5. Whilst the response from NATS to the applicant's Radar Impact Assessment confirmed that mitigation could be possible, the details of this had not been agreed. The Council's position was that without details of the proposed mitigation measures it was not possible to conclude if these measures would address the impact on the radars and would make the scheme acceptable.

Consequently, the imposition of a condition to secure unknown mitigation measures would not have been 'precise' or 'enforceable' as required in paragraph 55 of the Framework.

6. Given the importance of the mitigation and the need to be clear that it would be deliverable and timely, I do not consider that the Council has acted unreasonably in refusing the application without the information and demonstration that mitigation measures can be agreed and delivered via condition.
7. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense, as described the Planning Practice Guidance, has not been demonstrated and that a partial award of costs is not justified.

Tim Crouch

INSPECTOR