



Costs Decision

Site visit made on 5 September 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2019

Costs application in relation to Appeal Ref: APP/C1435/W/19/3220569 Land adjacent to Recreation Ground, Framfield Road, Blackboys, Uckfield, East Sussex TN22 5LR

- 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 Joshua Feldman for a full award of costs against Wealden District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the erection of 7 No. Dwellings, Access, Landscaping and Other Infrastructure. Dwelling Mix Comprising 6 No. Semi Detached Properties up to 106 M2 and 1. No Detached Property.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 applicant is seeking a full award of costs against the Council in relation to alleged unreasonable behaviour in relation to 3 issues:
 - 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; and
 - persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
4. There has clearly been some delay in consideration of the proposal and some uncertainty on the Council's concerns in the absence of refusal reasons as the appeal was against non-determination. But the Council has set out detailed reasoning for contesting the appeal in its statement of case.
5. It will be evident from the main appeal decision that I concur with the findings of the previous appeal Inspector's analysis on the suitability of the site for residential purposes in relation to its sustainability credentials, notwithstanding

that the site is not within a defined settlement boundary. However, the Council's concerns in referencing "*any development boundary or Core Area*" in the first of its suggested two principal issues related not to sustainability but to a consequent link to the second suggested principal issue on the impacts on the Ashdown Forest Special Area of Conservation (SAC).

6. Since the time of the previous appeal, the Council has prepared a new development plan and submitted this for Examination in Public, the Submission Local Plan (SLP). Although this is still at a relatively early stage and ordinarily afforded only limited weight as its policies may be subject to change, it is nonetheless a material consideration. As the quantum of development that can be appropriately mitigated in relation to its impact on the SAC is contended to be constrained to only that within designated development boundaries and Core Areas in the SLP, and the appeal site is clearly not within such an area, it does not amount to unreasonable behaviour for the Council to contest the appeal on this basis. Reference to the evidence base in preparing the SLP policies has also helped to substantiate the Council's reasoning for contesting the appeal.
7. The Council has acknowledged that Saved Policies GD2 and DC17 of the Wealden Local Plan (1998) in relation to the location of development are out of date. It has also acknowledged that it cannot currently demonstrate a five year housing land supply; however, the Council is entitled to apply an appropriate weight to other considerations that may outweigh the benefits of the proposal and has set out reasons why it considers this should be the case.
8. Both parties have referred to other appeal decisions to support their case, but the majority of these have been dismissed. The Council has not ignored the findings of other appeal decisions in contesting this appeal and has successfully challenged one appeal decision that was allowed.

Conclusion

9. Until the Examination in Public determines the soundness of the SLP there will remain uncertainty on whether the Council's current approach to safeguarding the integrity of the Ashdown Forest SAC will be supported, and I acknowledge the applicant's frustration in relation to the consequences for the proposal. However, I cannot agree that the Council has acted unreasonably in contesting the appeal as it has set out clear reasoning for doing so.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated. For the reasons set out above an award of costs is not justified.

Rory MacLeod

INSPECTOR