The Planning Inspectorate

Costs Decision

Inquiry Held between 1-11 October 2019
Site visit made on 9 October 2019

by Louise Phillips MA (Cantab) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th December 2019

Costs application in relation to Appeal Ref: APP/C1435/W/19/3230484 Mornings Mill Farm, Eastbourne Road, Willingdon BN20 9NY

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Wealden District Council for a full or partial award of costs against The Vine Family and the University of Brighton.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an outline application for planning permission with all matters reserved except for the means of access from Eastbourne Road for the comprehensive development of a mixed-use urban extension comprising up to 700 dwellings including affordable housing, 8,600 square metres of employment floorspace, medical centre, primary school, community centre, retail, playing fields, children's play space, allotments, amenity open space, internal access roads, cycle and footpath routes and associated landscaping and infrastructure..

Decision

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

Submissions

2. The Council's costs application and the appellant's response were both submitted in writing at the inquiry. The respective submissions are listed as Inquiry Documents 16 and 17 in my appeal decision.

Reasons

3. 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. The Council seeks a full award of costs alleging that the appeal had no reasonable prospect of succeeding because the appellant had not demonstrated that the scheme would not have an adverse impact upon the integrity of Ashdown Forest. In the alternative, it seeks a partial award on the basis that the appellant's full Habitats Regulations Assessment (HRA) was not provided until the exchange of Proofs of Evidence (PoE), necessitating the preparation of rebuttal proofs by the Council.

4. Starting with the full application, the appellant's completed HRA was available before the inquiry opened - as Appendix 6 to the PoE of Dr Read. Thus specific evidence was presented to counter the Council's putative Reason for Refusal 1. The Council considers this HRA to be flawed and it is certainly true that more recent transport evidence is available now than that which informed it.

However, the appellant's fundamental position throughout the inquiry was that Natural England's advice pertaining to the Council's emerging Local Plan[1] could be relied upon to conclude that the proposed development would not adversely affect the integrity of the Forest. Indeed Natural England does not object to the scheme and has made specific reference to its Local Plan advice in confirming this[2].

5. The Council strongly disagrees with Natural England's advice, but it is given by the statutory authority for the natural environment having reviewed the Council's own HRA evidence. It therefore carries significant weight in the decision-making process, and it is reasonable for the appellant to have used it to support its case. Some of the appeal decisions to which I have been referred take account of Natural England's advice and nevertheless conclude that an adverse effect upon the Forest cannot be ruled out, even for much smaller schemes than the appeal proposal.

6. However, those decisions followed from the written representations procedure and so the Inspectors did not benefit from the presentation of detailed oral evidence such as that which I heard at the inquiry. As I explain in my appeal decision, the question of how much weight should be attributed to evidence is a matter of judgement to be made with regard to the specific circumstances of the case. Moreover, I heard at the inquiry that HRA issues had been hotly debated at recent Local Plan examination hearings and that the appellant was not alone in favouring Natural England's position. For all these reasons, it cannot be said that the appeal had no prospect of succeeding on HRA grounds.

7. Turning to the partial application, the appellant's Stage 1 HRA[3] concludes that potential effects upon the Forest from NOx or nitrogen deposition cannot be screened out when the scheme is modelled in combination with other plans and projects. It consequently recommends that further assessment work should be completed. The Council did not specifically request a Stage 2 assessment, but the appellant ultimately decided to rely upon one at appeal and there is no good reason why it could not have been prepared by the time the appeal was lodged. If the Local Plan Inspector's Report was expected to resolve HRA matters, then the appellant could have waited for it to be published, but did not. With reference to the PPG[4], the late submission of the Stage 2 HRA therefore constitutes unreasonable behaviour.

8. However, the Stage 2 HRA is a key piece of evidence which should inform the decision-making process and so the Council would have needed to consider it, and comment upon it, whenever it was submitted. Whilst it might well have been inconvenient for the Council to have had to prepare rebuttal proofs, they were neither unnecessary nor wasted.

9. Overall, therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and so the application for an award of costs should be refused.

Louise Phillips

INSPECTOR

[1] The Submission Wealden Local Plan 2019.
[2] Natural England's response to being notified of the appeal, 1 August 2019.
[3] Core Document 1.18, para.
[4] PPG paragraph 052, Ref. ID 16-052-20140306.