



Costs Decision

Hearing Held on 19 November 2019

Site visit made on 19 November 2019

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2019

Costs application in relation to Appeal Ref: APP/E2205/W/19/3220880 Land at Lenacre Hall Farm, Sandyhurst Lane, Ashford, Kent

- 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 Millwood Designer Homes Limited for a partial award of costs against Ashford Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the development of 21 new residential dwellings, access, drainage, car and cycle parking and landscaping.
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Decision

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

The submissions

2. The appellant's case and the Council's response was made orally at the hearing. Details of the oral submissions are set out in the Annexe at the end of this decision.

Reasons

3. An award of costs may be allowed where it is found that a party behaves unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. In this case the appellant is seeking a partial award of costs relating to the work in preparation for the appeal, excluding any work relating to the S106 agreement.
4. The Council Officer's report included a recommendation of approval. However, it is not unreasonable for Members to disagree with such a conclusion per se. The Council has submitted a Statement of Case which, in relation to all three main issues, provides evidence sufficient to substantiate and provide an objective analysis identifying specific areas of concern for each reason for refusal.
5. With regard to the main issue of Character and Appearance the Council did not have a specialist officer attending the hearing. Nor did it seek to challenge the factual basis of the LVIA. Nevertheless, on the basis of its interpretation of the information, the Council came to a different conclusion to the appellant. This is not unreasonable and as set out above, appropriate evidence was provided to substantiate this position. Indeed, it can be seen in my main decision that I also find harm in relation to this main issue.

6. The Council has been specific about the elements of the proposed development which they consider to result in it being unsustainable in transport terms. Although it can be seen in the main decision that I disagree in relation to this main issue, the evidence presented is suitably specific and detailed so as not to represent unreasonable behaviour.
7. In relation to the main issue of biodiversity, it was agreed that elements of enhancement and protection of the landscape boundaries could be dealt with via condition. Nevertheless, the other part of the Council's case – that the loss of the field itself and the pets and paraphernalia associated with the new development – would be harmful to habitats, supported by evidence from the Kent Wildlife Trust. Whilst it can be seen in my main decision that I do not agree with these conclusions, I do not consider that these matters could be dealt with via condition and as such this is not unreasonable behaviour.
8. I am referred to relevant policies in the Ashford Local Plan 2030 and I note that this document was at an advanced stage at the time of the decision, and draft policies were referred to in the Officer's report. I see no reason why the adoption of this plan should lead to a change in the Council's view.
9. Consequently, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated.
10. For this reason, a partial award of costs is not justified.

H Miles

INSPECTOR

Annexe: Submissions made Orally at the Hearing

Appellant

11. The Officer's report includes a comprehensive analysis and sets out the acceptability of the scheme on all grounds.
12. The Council defended a reason for refusal despite the adoption of the Ashford Local Plan 2030.
13. The three principal reasons for refusal; landscape, biodiversity and sustainability have not been substantiated. It is agreed ecology can be addressed by condition. There is no evidence to counter the detailed submissions regarding the sustainability merits of the scheme. There is no dispute of the LVIA or landscape material.
14. The reasons do not stand up to scrutiny on the planning merits of the case. The reasons are generalised and not substantiated by evidence. In terms of biodiversity the development has been refused on a planning ground capable of being dealt with by condition.
15. The Council's unreasonable behaviour has caused the appellant unnecessary and wasted expense in the appeal process.
16. The following text from the PPG is engaged in this case

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 or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- *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.*
- *refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*

17. The Council submission includes generalised, inaccurate assertions.
18. The Council's submission for this hearing is 5 1/2 pages. No substantive justification for the position and the purported planning balance that has been undertaken had been put forward.
19. The appellant's position is that an award of costs is justified in this instance.

Council

20. The fact that this is a member overturn of an officer recommendation doesn't automatically bring about an award of costs. It is open to Members to analyse

officer recommendations and draw their own conclusions based on policy and local knowledge. This member overturn is, in itself, the Council's decision.

21. The Council have acknowledged in the statement of case that this is a balanced case with some benefits and disbenefits.
22. The Council have been consistent throughout this appeal in their approach.
23. In relation to the first reason for refusal the Council have provided evidence in the statement of case including a site visit and review of impacts. This is a subjective matter and it is quite right that a recommendation can be challenged and scrutinised by Members. In the statement of case and orally the Council have explained why they believe there to be harm and why the proposed development does not comply with policy.
24. In relation to the second ground for refusal the Council have not been unreasonable in their approach. At no point has it been suggested that this is the most unsustainable proposal, but the Council have clearly identified areas of concern.
25. In relation to the final ground for refusal, the Council have acknowledged detailed submissions and Kent County Council's response. They have however raised concerns with the benefits of the scheme in accordance with development plan policy. The grounds for refusal are based on policy and it is clear which elements are complied with to give clarity to the work the appellant had to undertake.
26. The Council have not introduced any new evidence at the hearing.
27. The Council are in agreement with the appellant with regards to the S106 agreement and for that costs should not be awarded.