



Costs Decision

Site visit made on 2 December 2019

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2020

Costs application in relation to Appeal Ref: APP/C1435/W/19/3235334 Rutherford, Cross in Hand Road, Heathfield TN21 0UR

- 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 Hicks for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for a new-build, chalet bungalow dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The applicant claims that the Council was unreasonable in refusing a development that clearly should have been permitted having regard to its accordance with the development plan, national policy and other material considerations. In particular, it considers that the speed survey, which was important for determining which design standards should apply to the site, was not properly taken into account. Also, that the Council's late withdrawal of its objection on habitats terms, and late information on highways matters incurred unnecessary expense.
 4. The Council set out why it concluded that the Design Manual for Roads and Bridges (DMRB) rather than the Manual for Streets 1 (Mfs1) and the Manual for Streets 2 (Mfs2) was the more appropriate reference for design guidance in this case. In my decision, I acknowledged that the peculiarities of the appeal site placed it on the cusp between the two sets of guidance. While I found Mfs1 and Mfs2 as the more relevant source to inform the determination of the appeal, relying on the DMRB guidance was not unreasonable of the Council. It assessed the proposal against that guidance, and properly took into account the other factors that may have influenced safety.
 5. There was disagreement between the parties over the validity of the speed survey and the allowance for a wet weather reduction, important because this would strengthen the case for the acceptability of Mfs2 as guidance. However, the survey did not record the weather conditions at the time the vehicle speeds were recorded. Given the reliance of a wet weather reduction upon the
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weather conditions on the road, it was not unreasonable for the highways authority to discount it. In any event, the speed calculation was not the single factor which led the highways authority to conclude against the DMRB, against whose desirable minimum standards the Y-distance fell short, nor was it the sole reason it found the access unsafe.

6. I acknowledge that the Council's stance may have appeared rigid, but it did not behave unreasonably in referring to the DMRB for guidance and placing greater weight on compliance with that than with the Mfs1 and Mfs2 or on the other factors which I concluded would outweigh any shortcoming. On the substantive issue, which in this case required a delicate balancing of risk against probability, the Council's conclusion, though different to mine, was not unreasonable.
7. The Inspector examining the emerging Local Plan wrote to the Council on 20 December 2019, following which, on 8 January 2020, the Council withdrew its evidence concerning its objection about the effect on the Special Area of Conservation. Though the objection was withdrawn late in the appeal process, the Council acted promptly in responding to the matter. This did not amount to procedurally unreasonable behaviour.
8. The Council submitted new weather conditions evidence in rebutting the appellant's costs claim. However, this was not substantial and was in any case in response to the new evidence of the historical weather data included in the appellant's final comments, which he in turn rebutted. Neither additional submission influenced my conclusion. In the circumstances, I cannot conclude that there was procedurally unreasonable behaviour.
9. I appreciate that the outcome of the application may have been a disappointment to the applicant. However, in the circumstances, the Council's balanced findings against the proposal, its timely withdrawal of the habitats objection and the additional evidence in its costs rebuttal did not in substantive or procedural terms amount to unreasonable behaviour.

Conclusion

10. I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not therefore justified.

Patrick Whelan

INSPECTOR