
Costs Decision

Site visit made on 8 October 2020

by J D Westbrook BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2020

Costs application in relation to Appeal Ref: APP/M2270/W/20/3247397 Land to the west of Hartenoak Road, HAWKHURST, TN18 4DW

- 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 Velvick and Future Habitat Ltd for a full award of costs against Tunbridge Wells Borough 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 planning permission for a residential development of 4.9ha (Access only).
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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 appellants have applied for costs under three headings, all based on examples given in the PPG:
 - 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,
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, and
 - not determining similar cases in a consistent manner.
4. The application related to a proposal involving a major residential development on land to the north of Hawkhurst village. It was an outline application, with access not reserved for later approval. The site lies within the High Weald Area of Outstanding Natural Beauty (AONB).
5. Given the location of the site and the complexity of the issues raised, a number of supplementary reports were needed and these were apparently produced at various times subsequent to the statutory determination date. I do not consider it unreasonable for the Council to require these reports in a complex major case such as this, and it would appear that the appellants agreed to time extensions in order for the reports to be appropriately considered.

6. In view of the time taken to receive and consider these reports, the Council contends that certain of the earlier comments of consultees needed revisiting in the light of changing circumstances. Again, this does not seem unreasonable. Among the key issues under consideration at this time were the effects of the proposal on the landscape and environment of the AONB, and the effect of the proposal on an already congested highway intersection in the middle of the village. Given these major concerns, which were never fully resolved, it is not possible to say that the development should clearly have been permitted. The proposal was considered to conflict with policy guidance in the National Planning Policy Framework, and with relevant development plan policies, and it was on this basis that the Council failed to grant permission while several issues remained unresolved.
7. The appellants contend that discussions relating to the submitted ecology report and transport assessment resulted in agreement regarding biodiversity gains and a satisfactory access to the site. This may well have been the case, but the major issues of impact on the landscape of the AONB and the congested intersection were clearly not resolved, as stated above, and I do not find any evidence of vague, generalised or inaccurate assertions, given that the Council has provided detailed technical reports of its own, or from consultees, to back up its position.
8. Finally, the appellants refer to a planning application for the construction of 28 houses on a site a little further south on Heartenoak Road, which was recently given permission by the Council. The appellants contend that this is evidence of inconsistency in the decision-making of the Council. However, there are marked differences between the two sites and the two applications.
9. The development permitted by the Council was for fewer houses on a site abutting the Limit of Built Development in Hawkurst, and which did not project any further north along Heartenoak Road than existing development on the other side of the road. The location and context of the appeal site is significantly different and the scale of development would be much greater, with correspondingly greater impacts. I do not consider that the Council has shown any inconsistency in approach given that the two schemes are not similar.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

J D Westbrook

INSPECTOR