



Costs Decision

Site visit made on 18 August 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2020

Costs application in relation to Appeal Ref: APP/W1850/W/20/3247476 Broad Oak Meadow, Broad Oak, Herefordshire HR2 8DZ

- 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 Len Farr for a partial award of costs against Herefordshire Council.
 - The appeal was against the refusal of Permission in Principle for the erection of 2 no. dwellings.
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Decision

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

Reasons

2. Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only 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's application for costs is based on the alleged unreasonable behaviour of the local planning authority ('LPA') and wasted expense, in respect of its reason for refusal 3 ('RfR3'), as considered below.
4. In undertaking an Appropriate Assessment ('AA') under the Conservation of Habitats and Species Regulations 2017 ('Habitats Regulations') the LPA took account of the proposed mitigation measures, which comprise the use of cess tanks to manage foul water drainage. In summary, the LPA found that the use of cess tanks, subject to appropriate management would ensure that there would be no direct impacts from foul water on the River Wye Special Area of Conservation ('SAC'), but the LPA went on to conclude that without a mechanism i.e. by condition for securing the required mitigation measures at the Permission in Principle (PiP) stage, it could not be determined that there would be no likely significant effects on the integrity of the SAC. This approach was consistent with the PPG¹ which states that any measures to mitigate the likely significant effect on the site need to be 'sufficiently secured'.
5. Also, in accordance with the Habitats Regulations the LPA also consulted Natural England and had regard to their advice which was an objection to the proposal due to it having an adverse effect on the integrity of the River Wye SAC. Accordingly, the LPA found that the proposal was for 'habitats development'.

¹ Paragraph 004 Reference ID: 65-004-20190722 of the Planning Practice Guidance

6. Therefore, the LPA did consider the mitigation measures in accordance with the advice in the PPG but for the reasons I have already outlined, concluded that the proposal was habitats development. Moreover, the advice in the PPG is clear that the LPA needs to be satisfied, after taking account of mitigation measures in the AA that the development will not adversely affects the integrity of the protected site. This is a matter of judgement for the LPA as the decision maker.
7. Although it is possible to attach conditions to the Technical Details Consent ('TDC') stage, Regulation 63(5) of the Habitats Regulations says: 'In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site. As the LPA had already concluded that the proposal was habitats development, it would not be possible for the application to proceed to the TDC stage where conditions could be imposed.
8. In light of the above and because there is no opportunity for the LPA to impose conditions at the PiP stage, the LPAs approach is not inconsistent with Regulation 63(6) of the Habitats Regulations.
9. I acknowledge that mitigation measures in most instances would need to be secured by some form of condition or legal agreement. Nevertheless, there could well be situations where the LPA would be satisfied, after taking account of mitigation measures in the AA that the development would not adversely affect the integrity of the protected site and grant PiP, as advised in the PPG.
10. There is nothing before me to suggest that the LPA ignored the applicant's legal advice, or that, by not sharing its own legal advice the applicant has incurred unnecessary expense.
11. Given all of the foregoing, the LPAs approach to determining the applicant's PiP application and in particular RfR3 was not incorrect. Therefore, I find that the LPA did not act unreasonably in this case. Accordingly, it is not necessary to consider the question of unnecessary or wasted expense. I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a partial award of costs is not justified.

M Aqbal
INSPECTOR