
Costs Decisions

Hearing Held on 19 – 22 January 2021

Site Visit made on 29 January 2021

by Lesley Coffey BA Hons BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1st April 2021

Costs application Appeal A Ref: APP/U1430/W/19/3244364

Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU

- 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 Westcott Leach Limited for a full award of costs against Rother District Council.
 - The hearing was in connection with an appeal against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
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Costs application Appeal B Ref: APP/U1430/W/19/3245114

Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU

- 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 Sea Change Sussex for a full award of costs against Rother District Council.
 - The hearing was in connection with an appeal against the failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.
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Costs application Appeal C Ref: APP/U1430/W/19/3246335

Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU

- 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 Sea Change Sussex for a full award of costs against Rother District Council.
 - The hearing was in connection with an appeal against the failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.
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Costs application Appeal D Ref: APP/U1430/W/19/3246923

Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU

- 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 Sea Change Sussex for a full award of costs against Rother District Council.
 - The hearing was in connection with an appeal against the failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.
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Costs application in relation to Appeal E

Ref: APP/U1430/W/19/3246925

Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU

- 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 Sea Change Sussex for a full award of costs against Rother District Council.
- The hearing was in connection with an appeal against the failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.

Decisions

Appeal A Ref: APP/U1430/W/19/32443649

1. The application for an award of costs is allowed in the terms set out below.

Appeal B Ref: APP/U1430/W/19/3245114

2. The application for an award of costs is allowed in the terms set out below.

Appeal C Ref: APP/U1430/W/19/3246335

3. The application for an award of costs is allowed in the terms set out below.

Appeal D Ref: APP/U1430/W/19/3246923

4. The application for an award of costs is allowed in the terms set out below.

Appeal E Ref: APP/U1430/W/19/3246925

5. The application for an award of costs is allowed in the terms set out below.

Appeal A: APP/U1430/W/19/32443649

The submissions for Westcott Leach

6. The application was made in writing. No additional points were made at the Hearing.

The response by Rother District Council

7. The Council responded to the Cost application in writing. No additional points were made at the Hearing.

Reasons

8. The Planning Practice Guidance 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.
9. The Reserved Matters (RM) application was submitted in October 2018 and was considered by the Planning Committee at a meeting on 10 October 2019. The LLFA objected to the RM application in January 2019 due to insufficient information in relation to the enabling infrastructure. The appellant nevertheless sought to address this matter directly with the LLFA

10. Officers provided a verbal update to the Planning Committee in relation to the drainage and surface water issues. They confirmed that on the basis of the submitted information the LLFA no longer objected to the proposal. Notwithstanding this, the Decision included a reason for refusal in relation to drainage matters. It was necessary for the appellant to address this matter as part of the RM appeal.
11. The Council confirmed in writing by letter dated 8 January 2020 that it would not contest this reason for refusal. This position was confirmed in the Statement of Common Ground. The appellant's Statement of Case in relation to this matter comprised about two lines. I therefore consider that whilst the inclusion of a reason for refusal in relation to drainage matters was unreasonable, given that the Council advised at an early stage in the appeal process that it would not contest it and the limited reference to it within the Appellant's statement, I do not consider that it gave rise to any unnecessary or wasted expense.
12. The appellant also states that he was not notified in sufficient time of concerns raised by consultees and therefore was unable to address these matters prior to the consideration of the application by the Committee. The appellant also refers to a number of errors and omissions in the Officer's Report and considers that cumulatively these matters impacted significantly on issues relevant to the determination of the planning application. It is the appellant's view that had such matters been properly brought to the attention of the Planning Committee that the application may have been approved.
13. The errors and omissions in the report to the Planning Committee included references to the National Planning Policy Framework 2012 (the Framework). I accept that these matters represent unreasonable behaviour, but on the basis of the submitted evidence I am not persuaded that in the absence of these errors that the RM application would have been approved. The failure to comply with the extant policies within the Framework does not go to the heart of the Council's concerns with the proposal. Moreover, there is no evidence to suggest that this error gave rise to unnecessary or wasted expense.
14. The Council's approach to master-planning and the Phasing Plan, did not accord with the reasons for conditions imposed on the outline planning permission. There was excessive reliance on the provisions of the SPD without any recognition of the significant changes in circumstances since the SPD was adopted. Whilst it is proper for the Council to have regard to the effect of the reserved matters on the remainder of the appeal site, no compelling evidence was submitted to explain why a masterplan was necessary. The appellant submitted convincing evidence to explain why a masterplan was considered to be an unnecessary constraint on development.
15. Whilst I appreciate the Council's desire for a Phasing Plan to understand how this RM application would fit with other phases, the site-wide issues the Council sought to manage through a masterplan were not pertinent to this RM application, particularly since it was aware that the appellant's approach had been informed by detailed information and surveys in relation to the levels across the site, the trees, biodiversity and the drainage requirements.
16. The submitted Phasing Plan set out the distribution of accommodation and parking throughout the site. It therefore complied with the reason given for

Condition 8 of the outline permission. However, the Council's approach to this condition was that it should result in an agreed first phase of development to provide a context for the RM application. This was not the stated purpose of the condition, and the Council's view that it would be an illogical first phase was not supported by any substantive evidence.

17. I conclude that the Council's approach in relation to master-planning and the Phasing Plan was unreasonable, and the appellant incurred unnecessary and wasted expense in relation to these matters.
18. The appellant considers the imposition of a Tree Preservation Order (TPO) on the appeal site during the application period to be unfair or unreasonable. It is within the power of the Local Planning Authority to make a TPO, and it is not unknown for TPOs to be confirmed during the course of an application. Although the appellant considers that it may have altered the value placed on these trees, I consider it more likely that the TPO was a reflection of the value placed on the trees concerned. Moreover, no evidence has been submitted to suggest that the TPO has given rise to wasted or unnecessary expense.

Conclusion

19. I therefore conclude that the Council behaved unreasonably and caused the appellant unnecessary or wasted expense in relation to master-planning and the Phasing Plan. The wasted or unnecessary expense relates to the appellant's evidence in relation to these issues at Sections 6.1 and 6.2 of the appellant's statement of case, and the time spent addressing these matters at the Hearing.

Costs Applications in relation to Appeal B, Appeal C, Appeal D, & Appeal E

The Submissions for Sea Change Sussex

20. These Cost applications were made in writing.

The Response by Rother District Council

21. The response to these applications was also made in writing.

Reasons

22. The Planning Practice Guidance 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.
23. I accept that the appellant may consider that the Council requested that these applications were submitted to support its reasons for refusal in relation to the RM application, nevertheless, the appellant was not compelled to submit these applications. Therefore, the fact that the Council may have sought or encouraged the submission of these applications does not amount to unreasonable behaviour.
24. The Council acknowledges that it did not respond to the appellant in relation to these applications. It states that its advice in relation to the RM application, as well as the Committee Report and reasons for refusal, were copied to the

appellant, therefore the appellant should have been aware of the Council's concerns with these applications. The Council also states that the Committee Report for the RM application was already published by the time the applications were validated on 30 September 2019.

25. The applications submitted a substantial amount of additional information, including, but not limited to, additional plans, a drainage statement, a supplementary note from the appellant's Arboriculturalist, a phasing plan and explanatory note, and indicative strategic landscape plan and indicative strategic landscape design principle, detailed landscape and planting plans. None of these plans or the other information submitted is referenced in the list of plans within the Decision Notice for the RM application. It is unclear from the report whether any of this information, other than the Phasing Plan, was taken into account. It would seem that the only reference to these applications within the Decision and the Officer's Report is to the Phasing Plan.
26. The appellant states that consultation was not carried out in response to these applications. It is unclear from the RM Report if the various consultees were aware of the additional information submitted with these applications. This would appear to be confirmed by the Council's questionnaire submissions in relation to these appeals. Therefore it would seem that the RM Report did not reflect the most up to date position. Based on the available evidence it would seem that the Council did little more than register the applications.
27. I accept that the appellant would have had some knowledge of the Council's position in relation to the RM application, but it was not the applicant for that application. With the exception of Appeal B (the Phasing Plan), there is no evidence either in the Officer's Report or Decision Notice that these matters had been properly considered, or that the relevant consultees had an opportunity to comment on these matters.
28. I find that the Council behaved unreasonably in relation to this matter in that it expected the appellant to rely on advice provided in a letter that pre-dated the applications, or alternatively, the report in relation to the RM application. There is no evidence that it consulted on these applications, and since the Report was published before these applications were registered and/or submitted, it seems improbable that the information submitted with them was assessed by Council Officers.
29. The appellant also considers that the Council has acted unreasonably in failing to determine these interlinked applications together, having dealt with them in a semi-conjoined manner throughout the rest of the planning process. However, given the date at which the applications were registered this would only have been possible if the RM application was delayed. Therefore, the failure to consider these applications at the same time does not amount to unreasonable behaviour.
30. The Council's position in relation to the Phasing Plan (Appeal B) is set out in the RM Officer's Report and the first reason for refusal. The Phasing Plan was submitted to comply with the reason given for Condition 8 in the outline planning permission, but it would seem that the Council's assessment went beyond what was sought in the condition. No evidence was submitted by the Council to explain why the Phasing Plan did not meet the requirements of Condition 8.

31. The Council states that the RM application relates to an illogical first phase and would limit the development options of the remaining parts of the central and eastern fields and dictate the route through the wooded belt separating the central and western fields. There is no evidence in the Officer's Report or the Council's Statement to indicate how the proposed phases would limit the development options for the remainder of the central and eastern fields. Nor is there any evidence to support its view that the proposed phasing is illogical.
32. I therefore consider that the Council's failure to discharge Condition 8 amounts to unreasonable behaviour. As set out in the advice in PPG for an award of costs to be successful the party applying for costs must demonstrate both unreasonable behaviour and wasted expense.
33. The appellant's statement in relation to this appeal needed to draw on the reasons in the Officer's Report for the RM application. I consider the expectation that one appellant should need to review the case of another appellant to understand the putative reasons for refusal to be unreasonable. Notwithstanding this, the phasing plan was specifically considered as part of the RM application and the appellant was represented at that appeal. Based on the evidence before me, I am not persuaded that other than the submission of the appeal, that the appellant incurred any significant wasted expense in relation to Appeal B.
34. In terms of surface water and drainage issues (Appeal C) the RM Officer's Report cited an absence of information, and this is reflected in the fifth reason for refusal. Given that the information sought had been submitted with Appeal C, and agreed to be acceptable by the LLFA, it was not possible for the appellant to understand the reason why these details were unacceptable.
35. The LLFA advised the Council shortly before the Committee that the details were acceptable. Despite being advised that this was the case Members included a reason for refusal in relation to this matter. However, this does not explain why the Council did not subsequently approve the information submitted with Appeal C when it was clear that the submitted details were acceptable.
36. These actions amount to unreasonable behaviour on the part of the Council. I therefore consider that a full award of costs in relation to this appeal is justified. I am aware that the Council advised the Planning Inspectorate on 8 January 2020 that it would not contest this reason for refusal, and therefore, costs are likely to be limited to the cost of preparing and submitting the appeal.
37. The appellant submitted additional documents with Appeal D (soft landscaping). It is unclear whether this information was taken into account in the Report, or if Committee Members were made aware of it. The Council's concerns with the soft landscaping submitted as part of the RM application are clear from the Officer's Report. This does not excuse the Council's failure to progress the application, nor is the Council's position that the appellant could find the information by reviewing the report for the RM application acceptable. I agree that this represents unreasonable behaviour on the part of the Council. Notwithstanding this, the appellant's unnecessary expense is limited to the submission of the appeal, since the Council's concerns with the soft landscaping were discussed in the context of the RM appeal.

38. In terms of Appeal E, (Hard Landscaping) the appellant sets out the matters it believes to be encompassed by Condition 9. These matters are considered in the Committee Report. Although I have reached a different view from the Council, I agree that the appellant would have been aware of the Council's view in relation to these matters from the Report. Whilst I agree that it is unreasonable on the part of the Council to expect the applicant to review another party's application, I consider the appellant's unnecessary or wasted expense would be limited to the submission of the appeal.
39. As set out in the costs application above, in relation to the RM application, the implementation of a TPO on the appeal site does not in itself amount to unreasonable behaviour. I am not persuaded that it led the Council to change its assessment of the value of the trees, but that consider that it was a reflection of the value that the Council placed on these trees.
40. Various other matters raised by the appellant in these cost applications relate to the consideration of the RM application and as such do not fall to be considered as part of these applications.

Conclusion on Appeal B, Appeal C, Appeal D and Appeal E

41. I conclude that the Council has behaved unreasonably in relation to these appeals and caused the appellant unnecessary or wasted expense. I make a full award of costs in relation to Appeal C. I make a partial award of costs in relation to appeals B,D and E. These costs are limited to the cost of preparing and submitting the appeals.

Costs Orders

Appeal A

42. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Rother District Council shall pay to Westcott Leach, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to master-planning issues and the Phasing Plan; such costs to be assessed in the Senior Courts Costs Office if not agreed.
43. The applicant is now invited to submit to Rother District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeals B, Appeal C, Appeal D and Appeal E

44. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Rother District Council shall pay to Sea Change Sussex, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the preparation and submission of Appeal B, Appeal D and Appeal E, and a full award of costs in relation to Appeal C; such costs to be assessed in the Senior Courts Costs Office if not agreed.

45. The applicant is now invited to submit to Rother District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Lesley Coffey

PLANNING INSPECTOR