



Costs Decision

Site visit made on 11 May 2021

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 15 June 2021

Costs application in relation to Appeal Ref: APP/Y3940/20/W/3257967 Land to the east of Wagtails, Southampton Road, Alderbury, SP5 3AF

- 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 1215 Heritage Homes for a partial award of costs against Wiltshire 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 the erection of up to 32 dwellings with all matters reserved (except access).
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Decision

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

Reasons

2. The Planning Practice Guidance 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 expense in the appeal process.
3. The applicant seeks an award of costs on the basis that the Council has acted unreasonably by restricting a strategic mitigation solution to allow development within the River Avon catchment, to what the parties referred to as 'planned development'. While differing definitions were offered as to the meaning of the term, it is the principle of the Council's position that the applicant claims is unreasonable.
4. I do not agree. Wastewater from the appeal site discharges into the River Avon catchment where Natural England's (NE) advice is clear - a plan or project for new residential development within the catchment will have a likely significant effect on the River Avon Special Area of Conservation (SAC), the River Avon Sites of Special Scientific Interest (SSSIs) and the Avon Valley Ramsar due to elevated phosphate levels in the River Avon. Furthermore, it advises that planning permission should not be granted before the competent authority has completed an Appropriate Assessment (AA) in order to assess the implications of the proposal for the designated sites in question.
5. In furtherance of this, the Council has agreed a mitigation strategy with Natural England to enable a Generic Appropriate Assessment¹ (GAA) to be carried out

¹ Generic Appropriate Assessment for Developments in Wiltshire Occurring in the River Avon SAC Catchment (7 Jan 2021).

which allows planning permission to be granted for certain proposals. The GAA makes clear that not all development is intended to be provided for and that it only applies to certain applications for housing². While I note the applicant's contention around the lawful basis for that approach, those matters fall outside the scope of this application. On the wording of the AA, agreed between the Council and NE, I do not consider it unreasonable for the Council to advance a case that certain categories of development fall outside its scope and require separate mitigation (and a separate AA to be carried out).

6. Overall, I am not persuaded that the Council's behaviour is of the sort which the costs regime is designed to discourage. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that an award of costs is not justified.

Conclusion

7. For the reasons set out above, I conclude that the application for an award of costs should be refused.

Rory Cridland

INSPECTOR

² Those which result in a net increase in foul discharge being made within the river Avon catchment that comply with the saved housing site allocations policies and/or Core Policy 2 of the Wiltshire Core Strategy.