
Costs Decisions

Hearing Held on 27 April 2021

Site visit made on 28 April 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2021

Costs application in relation to Appeal Ref: APP/N1730/W/20/3257541 Cherry Tree Farm, Chandlers Green, Mattlingley, Hook RG27 8LH

- 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 & Mrs Wright for a full award of costs against Hart District Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for erection of an agricultural workers dwelling with associated landscaping and car parking.
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Decision

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

Procedural Matters

2. The applicants submitted an application for costs in writing before the opening of the Hearing. The Council provided a written response. At the Hearing, no further oral submissions were made.
3. An application for costs was also made by Hart District Council against Mr and Mrs Wright. This application is the subject of a separate Decision.

The submissions for Mr and Mrs Wright

4. In summary, the applicants contend that the Council has acted unreasonably and not engaged properly or fairly with the applicants on matters including financial viability, the need for permanent accommodation on the farm and by applying a moratorium on the provision of mitigation against adverse impacts on the Thames Basin Heaths Special Protection Area (TBHSPA).
5. The applicants consider the Council has acted unreasonably and uncooperatively on the planning application¹ subject to this appeal and on an undetermined application² for temporary retention of the use of the barn as an agriculturally occupied dwelling with ancillary use of the caravan for 24 months which has affected the Council's ability to determine the current application.
6. The Council has also caused unnecessary confusion and obfuscation regarding the Council's Enforcement Notice and whether it is the Council's intention to force the removal of the caravan from the farm. If that was intended, then the

¹ Council Ref: 20/01274/FUL

² Council Ref: 18/02320/FUL

Council should have determined, and presumably refused, the aforementioned application in a timely and professional way.

7. Cumulatively, the Council has behaved unreasonably towards the applicants over the last two years and particularly on the application now subject to this appeal, putting the applicants through unnecessary stress, expense and wasted time and effort.

The response by Hart District Council

8. The Council acknowledges that it does own and/or control a number of Suitable Alternative Natural Greenspaces (SANGs). As the Council's supply of SANG is a finite resource it has adopted a formal allocation strategy to ensure SANG capacity is provided to those developments of greatest benefit to the District. Since the proposed development was not considered to be policy compliant the Council did not allocate it SANG. The Council has consistently advised the applicants what was required and how to address issues, such as SANG, by securing access to a third party SANG.
9. The Council requested additional information from the applicants during the course of the application now subject to appeal. The full information requested was not provided. The information that was submitted, received on 30 July 2020, was being reviewed by the Council's agricultural viability consultant, Savills, at the time the appeal against non-determination was lodged on 11 August 2020. The Council considers the applicants acted prematurely in lodging the appeal when discussions were still ongoing.
10. The undetermined application would have never been deemed acceptable, but the appropriate period for the local planning authority to make its decision and the time limit for an appeal against non-determination of the application has expired.
11. The Enforcement Notice is valid and effective from 8 August 2020. The Council has yet to make a decision on how to proceed on this matter which is a separate consideration from this appeal.
12. The Council did not determine the application within the statutory period as insufficient information had been provided. The Council does not consider it has behaved unreasonably and has produced evidence to substantiate both of the putative reasons for refusal as required.

Reasons

13. 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.
14. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
15. The Council has set out its reasons for not reaching a decision within the statutory time limit which relate to the provision of sufficient information to enable it to make a decision. In this regard, I am satisfied that the Council behaved reasonably in seeking sufficient information and undertaking analysis

of that information which resulted in the timeliness issues with the application. I have no firm evidence that the Council failed to engage with the applicants during the application process.

16. The Council refused planning permission³ in December 2020 for an identical scheme on the basis of financial viability and effects on the TBHSPA. It was not therefore unreasonable for the applicants to focus on addressing these points. However, it is evident that updated information was submitted to support the applicants' case in respect of the application that is the subject of the appeal.
17. The Council provided its putative reasons for its decision based on the information it had at the time. Based on its assessment of that information, the Council's statement of case, dated March 2021, concluded that it accepted the enterprise was financially sound, albeit marginally. However, it concluded that the stock levels did not demonstrate a functional need for a permanent agricultural worker to be present at the site for animal husbandry reasons. The information in respect of herd sizes had changed, this therefore changed the Council's assessment of essential need compared to the earlier refused scheme. This was not unreasonable behaviour.
18. The Council's statement also referred to the lack of mitigation for the TBHSPA. With regards to the TBHSPA mitigation, the Council has an adopted position on the allocation of its own SANG based on high demand and limited availability. This is not unreasonable. Since the Council considered the scheme was not policy compliant it was not unreasonable for the Council to withhold the SANG from the applicants. I have no evidence that the applicants were not advised to seek alternative arrangements during the original application process.
19. The Council's handling of the planning application which is not subject to this appeal is not directly relevant to this costs application. As far as the Enforcement Notice is concerned, it is not unreasonable for the Council to await the determination of the appeal before deciding on its course of action.
20. I am therefore satisfied that the Council acted reasonably in its handling of the planning application leading to this appeal and that the applicants have not incurred unnecessary or wasted expense in the appeal process.

Conclusion

21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

Rachael Pipkin

INSPECTOR

³ Council Ref: 20/01910/FUL