
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 Hart District Council for a full award of costs against Mr & Mrs Wright.
 - 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 allowed in the terms set out below.

Procedural Matters

2. At the Hearing, the Council submitted a costs application. As the Hearing remained open for other matters, I allowed submissions to be made in writing. The Council provided final comments.
3. An application for costs was made by Mr and Mrs Wright against Hart District Council. This application is the subject of a separate Decision.

The submissions for the Council

4. In summary, the Council considers the appellants have been unreasonable in both lodging the appeal and in introducing late, new and contradictory evidence throughout the appeal period. This has resulted in extra preparatory work.
5. In terms of the Thames Basin Heaths Special Protection Area (TBHSPA), a protected habitats site, the appellants could not confirm at the Hearing that the mitigation was in place and confirmed. The appellants have been clearly and continually advised of the need for this.
6. The appellants have therefore behaved unreasonably in pursuing an appeal which had no prospect of succeeding and through this have demonstrated unreasonable behaviour resulting in the Council incurring unnecessary and wasted expense in the appeal process.

The response by Mr and Mrs Wright

7. In summary, the appellants consider the Council's position has fluctuated between concerns about viability and concerns about essential need. As

essential need had previously been accepted by the Council, the appellants focussed on viability matters.

8. The appellants felt the only reasonable approach was to lodge an appeal after the Council's enforcement officers attended the site and threatened injunctive proceedings which would have left the appellants homeless. A duplicate planning application was submitted to mitigate delays.
9. It was only three days before the Hearing when the Council issued their decision notice on the second duplicate application that the Council's position that the viability of the site was agreed but essential need was not. This did not take into account all aspects of the farming enterprise. This caused the appellants to have to provide late evidence.
10. With regards the TBHSPA, the Council appears to ignore its own legal advice in relation to the suitability of the mitigation controls. The Council's officer sought to include comments to suit his own conclusions having accepted the suitability of the mitigation when asked direct. This is unreasonable.
11. The Council's costs application identifies no additional work and no wasted expense. There is no evidence that the Council were put to any costs beyond those usual in defending an appeal.

Reasons

12. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. Unreasonable behaviour may be either procedural – relating to the process; or substantive – relating to the issues arising from the merits of the case.
13. The Council's application for an award of costs are made on the grounds of unreasonable behaviour by the appellants both substantively in pursuing an appeal that had no reasonable prospect of succeeding; and procedurally, by introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.

Substantive Grounds

14. It is apparent that the Council was in the process of reviewing information submitted by the appellants in respect of the application at the time the appeal was lodged. Whilst the appellants have indicated that they felt they had no choice but to lodge an appeal following a visit to the site by the Council's enforcement officer, no firm evidence has been provided to indicate that the Council would take further enforcement action at that time.
15. Lodging an appeal in advance of all the information being fully provided and assessed, leads me to conclude that at the time the appeal was lodged it had no reasonable prospect of succeeding.
16. It is evident that the appellants were aware of the requirement to provide suitable mitigation in the form of Suitable Alternative Natural Greenspace (SANG) and contributions to Strategic Access Management and Monitoring (SAMM) against the adverse effects of the proposal on the protected habitats sites. The appellants sought to rely on access to the Guildford SANG for this.

The appellants submitted a legal agreement in the form of a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) which set out a mechanism by which mitigation could be secured. However, no information was provided about the suitability of the mitigation.

17. It will be seen from my decision, I agree with the Council that suitable mitigation needs to be provided without which the appeal cannot succeed. The appellants were aware of this requirement yet did not provide substantive evidence of the suitability of the SANG mitigation nor that they had secured this. In the absence of this, the appellants were pursuing an appeal which had no prospect of succeeding. This is unreasonable behaviour.

Procedural Grounds

18. In its statement of case, the Council set out that it considered the farming activities on the farm to be financially sound, albeit marginally, but that the stock levels did not require a full-time agricultural workers presence on the site. This was provided on 9 March 2021 and included evidence produced by the Council's agricultural consultant. This was some weeks before the determination of the duplicate planning application. The appellants would have therefore been aware of the Council's position on this several weeks before the Hearing.
19. I appreciate that previous appeals on the site have concluded that an essential need was found to exist. However, the Council was entitled to reach a different view on the basis of the information before it in respect of the current farming enterprise on the site. The appellants had sufficient time to provide evidence in response to this prior to the Hearing and their statement of case includes information relating to the essential need.
20. Various additional correspondence and information was subsequently submitted by the appellants during the period leading up to the Hearing. This included a detailed submission on 13 April 2021 and further correspondence on 27 April 2021 providing information relating to the calculation of average herd size. These submissions were submitted in a piecemeal fashion.
21. Furthermore, the information provided was also inconsistent in terms of what livestock was being kept on the farm and their numbers. It was confirmed two weeks before the Hearing that beef suckler cows were no longer part of the enterprise. The keeping of poultry was only raised at the Hearing. It only became clear at the Hearing and subsequent site visit what the actual scale of the farming enterprise and its herd numbers were. It seems to me that this information could have been provided more clearly, accurately and in advance of the Hearing.
22. I agree with the Council that the nature of the information and the way in which it was provided would have resulted in additional preparatory work for the Council and assessment by the Council's appointed agricultural consultant. This would have required both extra time and effort by the Council and its agricultural consultant.

Findings

23. I find that the absence of all the information required by the Council to enable it to determine the application at the time the appeal was lodged and the lack of information relating to mitigation of the habitats site meant that the appeal

had no reasonable prospect of succeeding. This amounts to unreasonable behaviour by the appellants. I also find that the submission of late and incomplete information amounts to unreasonable behaviour. This has resulted in unnecessary expense in the appeal process.

24. The additional information submitted was also provided in connection with the duplicate planning application being dealt with by the Council and would have required review by the Council as part of that process. Any calculation of the additional work associated with this must be limited to that required in connection with the appeal process.
25. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

26. 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 Mr and Mrs Wright shall pay to Hart District Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
27. The Council is now invited to submit to Mr and Mrs Wright, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Rachael Pipkin

INSPECTOR