



## Costs Decision

by **Stephen Wilkinson BA (Hons) BPI DIP LA MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 July 2021

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### **Costs application in relation to Appeal Ref: APP/U1430/W/20/3270665 Land off Spindlewood Drive, Bexhill on Sea**

- 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 Exigo Project Solutions for a full award of costs against Rother District Council.
  - The inquiry was in connection with an appeal against the refusal of an application for planning permission for an outline application for residential development for circa 160 dwellings with all matters reserved other than access.
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### **Decision**

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

#### **The submissions for Exigo Project Solutions**

2. The application is made on substantive grounds. In summary, these cover the following points:
  - Members continuously failed to heed the professional advice of officers and statutory consultees to the extent that their behaviour questions the basis of the plan led system
  - No evidence to support the reason for refusal
  - The Council's case was unreasonable and disproportionate to the issues
  - The withdrawal of the second reason for refusal after the exchange of proofs.
  - Presentation of evidence from a witness during the Inquiry was confusing and did not reflect his expertise.
3. Furthermore, the Council behaved unreasonably resulting in the applicant to incur unnecessary expense.

#### **The response by Rother District Council**

4. In summary, the Council's position is identified in corresponding bullets as set out below:
  - The Committee has discretion to make its decision with respect to the 'worst case scenario'. The original advice from NE is instructive in this regard.

- The Committee could not be persuaded by officer's advice. The Council Minute identifies that it was aware of the site being an allocation within the adopted local plan when it arrived at its decision.
- The Council have behaved entirely reasonably in respect of the presentation of evidence on this issue. This was subsequently borne out by the submission of additional material by the appellant on surface water drainage which led to the Council appointing witnesses to support the original decision to refuse in respect of its first reason for refusal, regarding surface water drainage.
- The Council made clear that it would not be pursuing its second reason for refusal on the day when evidence was required to be exchanged, not after as is alleged in the claim.
- It is unclear on what basis a criticism could be made of the Council's witness in respect of landscape and how unnecessary costs have been incurred.

## Reasons

5. Planning Practice Guidance (the Guidance) advises that 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 expenses in the process.
6. Planning Committee's have the discretion not to accept the professional advice of officers so long as a case could be made for a contrary view. In this case, however, the proposed development was in broad alignment with the Council's adopted policy BEX9 requiring 160 dwellings included in its DaSA, which forms part of its Local Plan only adopted in 2019. The appeal is an outline scheme for circa 160 dwellings with the location of proposed access points in accordance with the policy. In short, the application was a further refinement of the adopted policy seeking a decision on the principle of development on this site.
7. The application was supported by officers of the Council and there was no objection from each of the statutory undertakers who have a responsibility for the issue which was uppermost in Members consideration during the Planning Committee meeting, relating to both the detail of and implications of a surface water drainage strategy. Indeed Natural England's comments were reported to the Committee, to the effect that beyond reasonable scientific doubt the proposed mitigation would avoid any adverse effect on the integrity of *the qualifying features* (my italics). Their view was based on a consideration of the worst case scenario.
8. The Minute of the Planning Committee points to members receiving a range of information which countered that of the professional views of officers and the agencies which are directly involved in this highly technical area. The Committee was persuaded by the views of local people and erred on the side of caution reflecting concerns on the potential adverse effects of the surface water drainage strategy on the Pevensey Levels.
9. Even allowing for the operation of the precautionary principle which underpins the Habitats Regulations, the Committee's action is difficult to comprehend. The site allocation carries substantial weight and as the scheme was in accordance with the adopted Policy BEX9 it was only appropriate if an

alternative body of evidence to match the applicant's case in extent and detail was considered. The evidence presented, by local objectors did not present a sufficiently robust case to counter that of the applicant and the technical knowledge of the statutory undertakers in these circumstances.

10. This was not a speculative application, given the site's allocation and a higher bar or test was required in this instance before the Committee made its decision to refuse the application. At the very least the Committee could have deferred its decision and invited all stakeholders, not just Natural England for further discussion to seek re assurance on the points made by the objectors to allow a full and detailed analysis of all the information.
11. The reason for refusal states that Natural England was not satisfied that the worst case scenario had been considered, contrary to what is stated in the officer's report to Committee.
12. The Council's evidence in respect of Ecology was presented as a commentary. There was a lack of substantive evidence from the Council on the alleged harm which could result from the proposed landscape impacts of the surface water drainage strategy.
13. Each of the Council's witnesses acknowledged that a lot more evidence had been provided for this application/appeal than for the appeal at the neighbouring site at Clavering Walk<sup>1</sup>, which raised the same issues and which was allowed (an issue of consistency), and the Council's case would not have been undermined if this matter had been left to the Reserved Matters stage, an issue of proportionality.
14. The Council's second reason for refusal was withdrawn on the day that proofs were required to be exchanged. Again this reason, regarding the location of development in relation to services had already been tested during the Examination into the DaSA. The withdrawal of the reason at such a late stage in the process would have resulted in unnecessary costs by the appellants incurred in the preparation of the evidence base on this point.
15. The Council has a highly constrained housing land supply situation given the extensive areas of nationally designated and protected areas across the District and currently cannot demonstrate a policy compliant housing land supply. In these circumstances an adopted site allocation is at a premium. The Council should have exercised greater ownership of its housing allocation included in Policy BEX9 when considering the case being made for its development and the substance of the objections.

## **Conclusions**

16. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense of the type I have identified above and as described by the Guidance has been demonstrated in respect of its reasons for refusal.

## **Costs Order**

17. 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,

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<sup>1</sup> AAP/U1430/W/19/3234340

and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Rother District Council shall pay to Exigo Project Solutions, the costs of the appeal proceedings described in paragraphs 5-15 above.

18. 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. In the event that the parties cannot agree on the amount, a copy of the note on how to apply for a detailed assessment by the Senior Courts Costs office is enclosed.

*Stephen Wilkinson*

INSPECTOR