
Costs Decision

Site visit made on 27 June 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th July 2022

Costs application in relation to Appeal Ref: APP/C1435/W/21/3276178 Timberlee, Hartfield Road, Forest Row, RH18 5LZ

- 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 Trustees Julian Schild Trust for an award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for the erection of an infill dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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.
3. The Council incorrectly stated that the appeal site was within the 400m exclusion zone of the Ashdown Forest Special Protection Area (the SPA) and used this as the sole reason for refusing the planning application. The appellant has demonstrated beyond doubt that this is not the case, and the Local Planning Authority agrees with this and have withdrawn their only refusal reason.
4. The contention is that this has put the applicant to the unnecessary expense of having to appeal this decision based on the mistake made by the Local Planning Authority and has incurred the costs associated with the appeal.
5. The Council accept that the planning application was refused on the understanding that the site was located within the 400m exclusion zone of the SPA. It is highlighted that even Natural England were of the view that the appeal site appeared to be within the zone and raised an objection to the proposed development. However, the Council accepts that on further evaluation the appeal site has been found to be just outside the exclusion zone.
6. I have been directed to Paragraph: 049 of the Guidance that requires Local Planning Authorities to review their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), as part of sensible on-going case management. The Council says they did this and when its position on the matter of the site being outside of the exclusion zone

was confirmed, the Planning Inspectorate were advised, the reason for refusal was withdrawn and not contested. This discrepancy only came to light on the applicant's submission of appeal.

7. The Council explains that the 400m zone was drawn some time ago within their GiS Mapping system, Datamap. A Data map has been provided illustrating that the mapping system includes virtually the whole site within the exclusion zone. In assessing the site's location in respect of the exclusion zone during the course of the consideration of the planning application, the Council believes that they acted to the best of their knowledge given the information at hand. It became apparent to the Council that the Datamap drawing capability is not the best by modern day standards and cannot handle data with such accuracy and this leaves the exclusion zone border open to interpretation.
8. The Council contends that the applicant did not pursue the point about the exact boundary of the 400m zone at planning application stage. If further engagement with the Council had been conducted post-refusal, this matter could have been investigated by way of post refusal discussions, and given the Council's findings, the appeal could have been avoided. The Council considers that the lack of post-decision engagement has resulted in an unreasonable appeal.
9. The PPG indicates that one of the aims of the cost regime is to encourage Local Planning Authorities to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay. It is clear to me that the actions of the Council were not deliberate. However, the fact of the matter is that the Council's GiS mapping system was misleading and this is not the fault of the applicant. The PPG provides examples of unreasonable behaviour which may result in an award of cost. Withdrawal of any reason for refusal is one such example.
10. The misleading information has resulted in an unnecessary appeal and has put the applicant to unnecessary time and expense in defending an appeal. Whilst the situation is unfortunate for the Council, the reason for refusal imposed by the Council has not stood up to scrutiny. Although post-decision discussion may have addressed this issue, this does not obviate the applicant's right of appeal. This brings the parties within the scope of the costs regime and behaviour is judged against the advice in the PPG, even if the Council acted promptly once the discrepancy came to light as part of the applicant's appeal submission.
11. The Council also contest that the appellant's appeal statement seeks to justify development as if it were within the buffer zone suggesting the applicant accepted the development to be within the exclusion zone. However, given the circumstances, as I see it the applicant has taken a belt and braces approach in the event that the Inspector may find the development to fall within the exclusion zone. I do not consider this to have been an unreasonable approach by the applicant given the circumstances that necessitated the applicant to address those matters in dispute.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. On the basis that the sole reason for refusal related to the matter of the development's siting in relation to the exclusion zone and this was the only disputed matter pertaining to the appeal, a full award of costs is justified.

Costs Order

13. 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 Wealden District Council shall pay to Trustees Julian Schild Trust, 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.
14. The applicant is now invited to submit to Wealden 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.

Nicola Davies

INSPECTOR