
Costs Decision

Hearing Held on 8 November 2022

Site visit made on 8 November 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2022

Costs application in relation to Appeal Ref: APP/R0335/W/21/3280399 Winkfield Park, Winkfield Row, Bracknell RG42 6NA

- 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 Wilson for a full award of costs against Bracknell Forest Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for replacement stables and all-weather arena.
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Decision

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

Procedural Matter

2. At the close of the Hearing, the Council requested to submit the Environment Agency's response to changes to the Planning Practice Guidance (PPG) on flood risk and coastal change. The Council advised that the representation raised no new matters but had been requested in the pre-hearing note. On this basis, I accepted the submission. It was referenced as Hearing Document 1 (HD1). The applicant was given the opportunity to respond in writing. The applicant had not had sight of this document and reserved its position in respect of making an application for an award of costs. The application for an award of costs was made after the Hearing had closed.

The submissions for Wilson

3. The submissions were made in writing. The late representation (HD1) is the 'straw that broke the camel's back' and has caused the applicant to seek a full award of costs on the grounds that the Council has behaved unreasonably and that this has directly caused the applicant to incur unnecessary or wasted expense in the appeal process. In summary, as the applicant was only seeking outline permission, none of the reasons for refusal should have prevented the proposal being permitted in outline.
4. Specifically, the applicant considers that Environment Agency (EA) and the Council have wrongly concluded that the proposed development would not be water compatible development as listed under Table 2 of the PPG, paragraph 79. This has led the Council to conclude the development was unacceptable in the location. In addition, the EA had confirmed equestrian development

elsewhere as being water-compatible and its approach was therefore inconsistent.

5. The late representation attempted to introduce and further arguments. However, the applicant considers that had the Council and the EA applied proper consideration to the submitted documents at the appeal stage, the late representation would have been unnecessary as the matters it covered had already been addressed by the applicant's flood risk consultants.
6. The Council's representation in relation to the 'former managers house' within its first reason for refusal is without planning merit. The Council's reason for refusal in respect of harm to protected species and habitats on The Cut river corridor were unsubstantiated given that an Ecological Assessment had been submitted by a suitably qualified and experienced ecologist who concluded there would be no adverse effect.
7. For these reasons, the applicant considers the Council has acted unreasonably resulting in unnecessary and wasted expense in the appeal process.

The response by Bracknell Forest Borough Council

8. The applicant sought to make a costs application once the hearing closed, there was no reserving of position by the applicant during the hearing and the 'good reason' for making a late application for costs, as required by the PPG, is the production of HD1.
9. HD1 did not raise any new matters. It was not a late representation but a response to a pre-hearing request from the Inspector which sets out comments on the implications of the changes to the PPG following its update on 25 August 2022. HD1 set out minor changes to paragraph numbers and only offered an opinion on the question of conformity with advice in paragraph 79 of the PPG. This was not a new issue and did not cause additional expense to the applicant, having been raised and responded to by both parties during the application. It was not unreasonable to bring the updates to the attention of the Inspector.
10. The application restates the applicant's case in respect of the merits of the case which are matters for the Inspector. The applicant has not been put to any unnecessary or wasted expense within the appeal process.

Reasons

11. The PPG 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. It goes on to explain that the local planning authority is at risk of costs on substantive grounds relating to the issues arising from the merits of the appeal; or procedural grounds relating to the process.
12. Paragraph 035¹ of the PPG advises that applications for costs should be made as soon as possible, and no later than specified deadlines. In the case of a hearing, all costs applications must be formally made to the Inspector before the hearing is closed. Any such application must be brought to the Inspector's attention at the hearing. Where the application relates to behaviour at the hearing, the applicant should tell the Inspector before the hearing is adjourned

¹ Paragraph: 035 Reference ID: 16-035-20161210

to the site that they are going to make a costs application. Anyone making a late application for an award of costs outside of these timing will need to show good reason for having made the application late, if it is to be accepted by the Secretary of State for consideration.

13. As HD1 was submitted at the end of the Hearing, prior to the site visit being undertaken, there was not sufficient time at the event to enable the applicant to review the document. Contrary to the Council's view, the applicant did reserve its position in relation to the application for an award of costs at that time.
14. HD1 was a short email response which described changes to paragraph and table numbers within the PPG. It highlighted paragraph 49 in respect of the provision of a compensation scheme which included that the use of voids should not normally be relied upon for compensating any loss of floodplain storage. It also sets out the advice in paragraph 79 of the PPG about the design and construction of water-compatible uses, offering an opinion that these had not been taken into consideration in the design of the proposal.
15. It is not clear why the Council chose to submit this document so late on in the proceedings given this had been required in my pre-hearing note. This amounts to unreasonable behaviour relating to the process.
16. The changes to the PPG highlighted within HD1 did not raise new matters. It is evident from the EA's consultation response to the original planning application and the applicant's own response to this that the matters now set out in paragraph 79 had been previously discussed. HD1 does not therefore introduce or seek to further arguments. There is nothing within HD1 to substantiate the applicant's assertion that the Council and the EA failed to consider the material put forward in relation to flood risk at the application stage.
17. Given that I have found that HD1 raises no new or substantive matters, the justification for making a late application for costs on the grounds that this document was submitted has not been demonstrated.
18. I appreciate that the applicant considers this late submission was the final straw. However, the fact that a document was submitted late does not justify the application in seeking to demonstrate unreasonable behaviour in respect of matters unrelated to the submission of HD1. It was open to the applicant to have made an application at the Hearing itself on these other matters if it considered the Council had behaved unreasonably.
19. I find that the Council has behaved unreasonably on procedural grounds in submitting HD1 so late on in the Hearing. However, it raised no new matters and there is nothing to show that the applicant has been put to unnecessary or wasted expense as a consequence of this.

Conclusion

20. 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