



Costs Decision

Site visit made on 29 November 2022

by C Shearing BA (Hons) MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 16 December 2022

**Costs application in relation to Appeal Ref: APP/C3810/W/22/3290113
Area of Land (formerly Former McIntyre Nursery), North of Highdown
Vineyard, Littlehampton Road, Ferring BN12 6PG**

- 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 Mark Wood of Premier By Design Ltd for a full award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for use of the land for storage of building materials, 2no. proposed storage containers and 2.4m high palisade or paladin fencing (coloured green) to perimeter with access gates.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council behaved unreasonably through misinterpretation of its policies, failure to consider the previous uses of the appeal site and substantiate the impacts on the settings of the South Downs National Park (the SDNP). The applicant also asserts that the Council's behaviour during the course of the planning application was unreasonable. I shall consider these matters in turn.

Policy

4. The Council's officer report discusses policy EMP DM1 of the Arun Local Plan (the ALP) in detail, including reference to its criteria. However, the report does not substantiate why the Council did not consider the proposal to comprise 'an appropriate sized extension' to an existing employment site which was a relevant consideration. The report goes on to describe why some of the other criteria in Policy EMP DM1 were not met, which were also necessary to make the proposal compliant with that policy. As the compliance of the appeal scheme with that policy overall was not solely reliant on that point, I do not find the Council's assessment unreasonable.
5. With regard to the assessment of the proposals on the setting of the South Downs National Park, the officer report describes the reasons why the proposals were considered to cause harm to its setting, having regard to the

degree of screening and ground levels to the north. The effect on its setting is a matter of judgement and I do not have evidence that the South Downs National Park Authority should have been a statutory consultee, or that their comments would have resulted in a different outcome on that matter. While neither of the main parties has submitted detailed evidence relating to the views into and out of the National Park, the Council's assessment was adequately substantiated by its report.

History of the Appeal Site

6. The Council's officer report describes the planning history of the adjacent sites including those which were determined by appeals. While they are not referenced further, on the basis of the evidence before me I am satisfied that the Council had regard for the planning history of the site, and those relevant neighbouring sites, in reaching its decision.
7. The applicant's 'rebuttal statement' to the Council, including additional information and aerial photographs of the appeal site, were submitted close to the Council's advertised determination date. Its contents are not specifically discussed in the Council's report and it is unclear to what extent its contents were considered. In any event, as described in the separate appeal decision, that document did not provide substantive evidence of earlier buildings or comparative employment uses on the site which would result in the site forming a part of the neighbouring cluster of development. Even if they did exist, any structures have now been removed and the appeal site exists as predominantly grassland. As such the considerations within the rebuttal statement were unlikely to have altered the Council's decision nor avoid the need for the appeal.

Consideration of the Planning Application

8. The concerns surrounding the lack of request for a preliminary ecological assessment (PEA) relate primarily to the Council's internal processes and procedures, which I do not intend to comment on in detail. The absence of a PEA on the Council's validation list did not establish that it would not be necessary and the validation checklist describes that these are minimum requirements. Given the characteristics of the appeal site, I do not find the Council's request for information on the effects on protected species to be unreasonable.
9. The lack of a request for this information during the application process would have been frustrating for the applicant. However, based on the evidence before me, the Council notified the applicant of the intended determination date of 15 November 2021 within its validation letter, and the Council states on its website its process for determining applications, including that changes will be unlikely to be allowed as this may require reconsultation which would delay the decision. This would likely have been the case here given the additional technical information provided. Overall, I do not find the Council behaved unreasonably in this respect, as it followed the process it advertises.
10. Even if an extension of time had been agreed to allow the submission of the PEA, and a more positive working relationship had been established, this would not have addressed all the Council's concerns nor avoided the need for the appeal given the other substantive issues.

11. There were misunderstandings during the course of the planning application relating to the comments of the Council's tree officer. However, the officers report correctly summarises the tree officer's comments and recommendations, and I am therefore satisfied that the Council had due regard for that consultation response in reaching its decision.

Conclusion

12. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has not been demonstrated. Therefore the application for costs is refused.

C Shearing

INSPECTOR