The Planning Inspectorate

Costs Decision

Site visit made on 4 January 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Costs application in relation to Appeal Ref: APP/C1435/W/22/3301199
Mill House Farm, London Road, Maresfield, Uckfield, E Sussex, TN22 2ED

- 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 Mr R Flittner for a full award of costs against Wealden District Council.
- The appeal was against the refusal of planning permission to erect one 3 bedroomed, high energy efficient, self build dwelling and garage. Using approved access for 19/1499 and 20/1962 and the STP approved by 20/1962.

Decision

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

Reasons

2. The Planning Practice Guidance[1] (PPG) advises that, irrespective of the outcome of an 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.

3. The applicant submits that the Council undertook no positive or proactive consultation with the appellant before it made its decision, and that had additional information been requested the refusal reasons would have been overcome easily and the appeal avoided. Such matters are however of limited relevance to an application for costs as they relate solely to the Council's conduct before it made its decision. The PPG[2] advises that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, although the behaviour and actions at the time of the planning application can be taken into account.

4. During the appeal process the Council maintained its position in relation to trees, flooding and ecology and failed to address the applicant's submissions in respect of these matters at the appeal stage.

5. In terms of trees, the applicant made it clear that the conifer trees on the eastern side of the access track were removed. I was able to verify this at the time of my site visit, however the Council still referred to these in its statement of case, even though an officer visited the site and would have seen the removal of these substantial trees.

[1] Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306
[2] Planning Practice Guidance Paragraph 033 Reference ID: 16-033-20140306

6. As to flooding, at the appeal stage the Council maintained its position that a Flood Risk Assessment is required without appearing to properly address the advice of the Environment Agency when it advised that the flood map is incorrect.

7. With regard to ecology, the applicant provided a Preliminary Ecological Appraisal as part of his appeal submission. The Council acknowledged this in its statement but made no assessment of its content.

8. For these reasons and in relation to these matters, in light of the information contained within the applicant's submissions, I find that the Council failed to produce evidence to substantiate its refusal reasons. In doing so it can be considered to have made vague and inaccurate assertions about the proposal's impact at appeal in relation to refusal reasons 2, 3, and 4 by failing to take into account the submitted evidence. This constitutes unreasonable behaviour.

9. I also need to consider whether the unreasonable behaviour of the Council has resulted in unnecessary or wasted expense on the part of the applicant. The applicant spent time and effort addressing these matters in writing at the final comments stage.

10. I am however of the view that the Council has not prevented development which should clearly be permitted, as I have dismissed the appeal; and the unreasonable behaviour I have identified is limited, relating to three of the five refusal reasons that the Council used. Thus, a partial award rather than a full award is justified.

Costs Order

11. 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 Mr R Flittner, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to matters related to refusal reasons 2, 3 and 4 at the final comments stage; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. 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 an agreement as to the amount.

A Tucker

INSPECTOR