



Costs Decision

Hearing Held on 14 December 2022

Site visit made on 14 December 2022

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 FEBRUARY 2023

Costs application in relation to Appeal Ref: APP/M3645/W/20/3252200 Land off Green Lane, Outwood, Redhill, Surrey, RH1 5QR.

- 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 Francis Coyle for a partial award of costs against Tandridge District Council.
 - The hearing was in connection with an appeal against the refusal of an application for the change of use of land for the stationing of caravans for residential purposes for 2 Gypsy pitches, together with the formation of a hardstanding and utility/day rooms ancillary to that use and erection of a stable.
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Decision

1. The application for a partial award of costs is refused.

The submissions for Mr Coyle

2. The planning application was refused in July 2019 partly on the grounds of the effect on biodiversity and lack of evidence on mitigation, however the appellant commissioned a Preliminary Ecological appraisal and other detailed studies regarding potential effects when able to do so in accordance with Covid restrictions. These concluded that there would be little effect from the development proposed and that mitigation where necessary could be addressed by condition. The result of this specialist work was forwarded to the Council in April 2021. However, by the time of the Hearing the Council had not withdrawn its objection on biodiversity grounds. This resulted in the ecological consultant Mr Davies having to attend the hearing to give evidence in person which was unnecessary and resulted in additional costs. This constitutes unreasonable behaviour.

The response by the Council

3. The necessary biodiversity appraisal had not been submitted with the original application as it should have been. The further work undertaken was addressed by the Council in its hearing Statement submitted in July 2021. Now that the ecological surveys have been carried out the Council submits that its precautionary approach was justified. Moreover the appellant's view of the appraisals recommended that any potential harm could be mitigated and secured by a condition 'if necessary'. This left doubt over whether the matter could actually be addressed by condition. The Council also submitted recommended conditions in its statement but had not completed the ecological one No.11 – leaving it as 'wording to follow' as there was nothing from the appellant and his

advisors before the hearing on the details of what mitigation should be included in a condition. Mr Davies's attendance at the hearing was therefore necessary in order to discuss and conclude on what mitigation measures should be included in an appropriate condition.

Reasons

4. The Planning Practice Guidance (PPG) 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. Moreover, the PPG indicates in paragraph 49 that an example of behaviour that could lead to an award of costs against a local planning authority would be 'not reviewing their case promptly' following the lodging of an appeal against the refusal of permission, or by refusing permission on a planning ground that was capable of being dealt with by conditions where it is shown that suitable conditions would enable the proposed development to go ahead.
5. In this case it is clear to me that the circumstances of the site are such that the original application should have included a preliminary ecological assessment which may have flagged up where more detailed studies were needed. This work was eventually undertaken by the appellant's team and I have no doubt that its timing was delayed by exceptional restrictions stemming from Covid Regulations.
6. The results of this further ecological work were taken account of by the Council when it submitted its statement on the appeal. At that time there was still 'loose ends' on the ecological work and the appellant's consultants had not suggested the wording of a condition that could be recommended at the hearing.
7. Mr Green suggests that paragraph 6.27 of the Council's statement indicates that the Council was querying the appellant's commitment to providing the protection measures but I do not see this as a significant part of the Council's position which related more to there being doubt over the actual wording proposed by the appellant's team.
8. In these circumstances it was necessary for the ecological consultant to present his case on biodiversity at the hearing. Moreover, although parties agreed that it was likely that the biodiversity issue could finally be resolved by a condition neither party was able to suggest a draft of this on the day of the hearing. I had to request that the parties liaise after the hearing and then submit an agreed wording for a condition. This was submitted on the 9th February 2023.
9. I conclude that Mr Davies attendance at the hearing was required in the proper assessment of the biodiversity issue in the appeal and he was present not because of some lack of response or review by the Council. The time needed for Mr Davies to prepare for and attend the hearing was therefore necessary on behalf of the appellant and the Council's stance in arriving at this position was not unreasonable.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

David Murray

INSPECTOR