
Costs Decision

Site visit made on 6 February 2023

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Costs application in relation to Appeal Ref: APP/C1435/W/22/3294192 Fishing Lodge, Bewl Water, Bewlbridge Lane, Lamberhurst, TN3 8JH

- 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 Bewl Events and Water Parks Ltd for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for the change of use and extension of fishing lodge to form 4 x 1 bed tourist units.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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.
3. It is contended that the Council's decision is entirely at odds with the professional assessment by the Council's Planning Officers and other specialist Council advisers.
4. The Council decision notice is contradictory and disjointed. The Council does not appear to accept the principle of a tourist use of the site despite the reason for refusal saying the site is an established recreation, leisure and tourist attraction. In overturning the officer's recommendation, the Council should have substantiated their decision. It is contended that the Council has not substantiated the claim in regard of the loss of accommodation and the impact on the High Weald Area of Outstanding Natural Beauty (the AONB) has been overexaggerated. It is suggested that discussion about the scheme's design, the additional built form and amount of glazing never took place during the committee meeting. The lighting concerns could have been dealt with by way of a suitably worded planning condition.
5. There has been a previous planning permission for tourist accommodation at this site. That permission was considered against the same Wealden Local Plan 1998 policy context and weighed heavily in favour of the scheme.
6. Reference is made to a comment made at the planning committee meeting that suggests members implied that if this proposal was made anywhere else in the

- district, members would support it. Such a statement has no policy support or justification.
7. It is considered that the Council could have engaged more so with the applicant during the planning application process and in respect of the requirements of the Community Infrastructure Levy (CIL).
 8. For these reasons the applicant has incurred significant costs associated with making an unnecessary appeal.
 9. The Council acknowledges that members did not accept the recommendation of its Officers but advises that the decision is a matter of judgement and planning balance. The Committee members had to balance the effect of the proposed development upon the alterations to the building and the protected High Weald AONB. This also included those third party representations received as part of the Council's public consultation process. Members are entitled not to accept the provisional advice of their Officers provided a case can be made for coming to a contrary view.
 10. Members were concerned about light pollution which both local and national policy seeks to prevent, especially in protected landscapes. This is also referenced in the AONB Management Plan.
 11. The Council contends that it has produced clear reasoning backed up by current planning policy to support its reason for refusal. It is contended that the reason for refusal is itself detailed and precise and that it is an incorrect claim that the history of the site was not taken into consideration.
 12. The Council has responded in a timely and complete manner at each stage of the appeal process ensuring that there is no undue procedural delay in the determination of the appeal. The Council advises that exchanges of correspondence took place during the planning application process and in connection with CIL.
 13. Reference is made to various judgements, the essence of which advise that *where the decision is that of a collective body, such as a planning committee, the courts will look at the "general tenor" of their discussion rather than the individual views expressed by Members*. By majority, the Committee voted to withhold planning permission and so when viewed, as a whole, the tenor of the Committee was against the appeal application. Members, as a whole, exercised their democratic right. With reference to the applicant's comment at paragraph 6 above, there is no evidence that the single statement, if uttered, infected the debate to such an extent that it skewed the outcome and triggered the appeal.
 14. The Council does not consider that unreasonable behaviour has taken place on their part that might have resulted in unnecessary or wasted expense.
 15. It is open for Members to come to a different decision to their Officers and specialist advisers. The reason for refusal provided on the Council's decision notice is self-explanatory and clearly sets out why members found the proposal unacceptable and has regard to development plan policies.
 16. The loss of accommodation is discussed within the Council's appeal submission. Other planning applications have been considered at Bewl Water that have sought to provide facilities to support the fishing activities at the reservoir. It is clear to me that the members had support for the fishing activities in mind

when reaching their decision. There was a planning balance to be made between differing elements of recreational/tourism uses relating to the building. I am satisfied that the Council has substantiated and justified its reason for refusing planning permission in this respect.

17. With regard to the impact upon the High Weald AONB, I am satisfied that the Council has justified its reason for refusal both within the decision notice and appeal submissions. Reference is made to development plan policies and other documents pertaining to the AONB. The fact the applicant holds a different view as to the impact of the proposal upon the AONB is one that is open to be held.
18. The disagreement between parties with respect to the loss of accommodation and the impact upon the AONB does not mean that this amounts to unreasonable behaviour on the Council's part, nor does the fact that I have come to a different view on these matters to that of the Council's committee members. Although I have found that suitable planning conditions would enable the proposed development to go ahead, this is a subjective judgement and one that others may disagree with, including those interested parties who have objected to the proposed development.
19. The previous planning permission for tourist accommodation was for two units of accommodation and would not have involved extensions to the building. It was a lesser proposal to that before me. Despite there being no change to the 1998 policy context, that decision was reached some time ago. The Officer report to planning committee highlighted that the previous planning permission for tourist accommodation was a material planning consideration. Nonetheless, it does not necessarily correlate that a different proposal, although for the same type of accommodation, would automatically be acceptable. I am satisfied that members of the Planning Committee considered the impact of the proposed development on its own merits.
20. In terms of the member discussion at Planning Committee and comments that may have been made, the decision was reached as part of a democratic body of collective members. There is no substantive evidence that would indicate that any one comment made by a particular Committee member has skewed the outcome and triggered the appeal. If the applicant has a concern about the conduct of the Planning Committee or a particular member this is a matter to be taken up with the Council separate from this appeal.
21. With regard to the Council's conduct during the course of the planning application process this should also be taken up with the Council directly. Whilst all parties are expected to behave reasonably throughout the planning process, the PPG advises that the award of costs cannot extend to compensation of indirect losses, such as those which may result from alleged delay in obtaining planning permission. CIL Regulations set out the processes and procedures for the payment of CIL and this is separate to the planning regime and is not a matter for the planning system or this application to resolve on behalf of the applicant.
22. Based upon the information before me I cannot conclude that the appeal would or could have been avoided.

Conclusion

23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs is not justified.

Nicola Davies

INSPECTOR