
Costs Decision

Hearing and site visit held on 14 February 2023

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2023

Costs application in relation to Appeal Ref: APP/C1435/W/22/3307950 Land adjacent to the Recreation Ground, Blackboys, East Sussex TN22 5LR

- 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 Joshua Feldman for a partial or full award of costs against Wealden District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of 9 no. dwellings with associated access, landscaping and associated infrastructure.
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Decision

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

The submission

2. The submission and the response were made in writing. A rebuttal was heard orally.

Reasons

3. Planning Practice Guidance (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 or wasted expense in the appeal process. The PPG says that local authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal or in relation to procedural matters. This can be by unreasonably refusing or failing to determine planning applications, or by unreasonably defending an appeal.
4. The background to the costs application is relevant and consists of the following summary of earlier applications and appeals:

WD/2017/0942/O Outline application for 7 dwellings, appeal dismissed
18 July 2018

WD/2018/1701/O Outline application for 7 dwellings, appeal dismissed
4 December 2019

WD/2020/0048/O Outline application for 7 dwellings, approved 15 June 2020

WD/2020/2553/F Erection of 9 dwellings, appeal dismissed 11 February 2022
(ref APP/C1435/W/21/3277221)

5. Importantly the Council accepted the principle of residential development of the site on 15 June 2020. The subsequent application for 9 dwellings was refused at appeal for the sole reason that the dwelling on plot 1 would have unacceptable characteristics, summarised by the Inspector as having a cramped and contrived appearance, at odds with the semi-rural character and appearance of the area, specifically because:
 - It would be orientated uncomfortably in a way which turned its back to the road and would be close to it, untypical of scattered dwellings in the area; and
 - The useable garden space at the rear of the dwelling on Plot 1 would also be small for a dwelling of this size, north facing, and backing onto the busy Framfield Road.
6. These matters were addressed in the subsequent application subject of this appeal. At the Hearing, the Council could offer no robust, persuasive or convincing reasons why the revised orientation of the dwelling on plot 1 or the size and layout of the garden were not acceptable in terms of development plan policy. Whilst the revision resulted in changes to the layout of the rest of the scheme, the Council could not explain why it would be perceived as 'cramped and contrived' or unacceptable in terms of policy, beyond vague assertion.
7. The Council maintained objections related to location, design, materials and landscaping which had been previously been found to be acceptable. Moreover it introduced a new reason for refusal related to foul drainage which had not previously been in issue, a reason withdrawn before the Hearing¹ but which nevertheless the appellant had to address for a time before it was formally withdrawn.
8. The Council maintains that the changes necessary to make plot 1 acceptable 'tipped the balance' in terms of a 'cramped and contrived' appearance. Whilst there is a subjective element of judgement to that conclusion, no firm evidence to elucidate or explain was forthcoming in support. Moreover, the Council asserted in its reason for refusal that 'major revision' would be necessary to remedy the perceived disadvantages. No possible means by which the development could be revised to achieve this were suggested. This claim itself was unreasonable given the degree to which the appellant had consulted with officers on developing the scheme and the previous comments by different Inspectors since 2018.
9. Accordingly, it has been shown that the Council a) prevented development which should clearly be permitted, having regard to its compliance with the development plan, national policy and any other material considerations; b) failed to produce evidence to substantiate each reason for refusal on appeal; c) made vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis; and d) persisted in objections to a scheme or elements of a scheme which Inspector(s) had previously indicated were acceptable.
10. This caused unnecessary and wasted expense and represented unreasonable behaviour on the part of the Council, justifying a full award of costs.

¹ At committee on 8 December 2022

Costs Order

11. In exercise of my 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 Joshua Feldman, the costs of the appeal proceedings described in the heading of this decision; 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 agreement as to the amount.

Paul Jackson

INSPECTOR