



Costs Decision

Hearing Held on 10 January 2023

Site visit made on 13 January 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Costs application in relation to Appeal Ref: APP/K2420/W/22/3308175 Land at Crabtree Farm, Hinckley Road, Barwell

- 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 Barwell Capitol for a partial award of costs against Hinckley & Bosworth Borough Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of 51 Plots with associated access and parking.
-

Decision

1. 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.
2. The applicant's application for costs is based on the alleged unreasonable behaviour of the Local Planning Authority ('LPA') and wasted expense, for substantive reasons, as considered below.
3. The applicant's costs application was made orally at the Hearing as was the LPAs rebuttal and applicant's final response.
4. One of the LPAs putative reasons for refusal refers to the failure of the proposal to demonstrate that the proposed development would not have any adverse impact on protected species and that there would be no losses to biodiversity. Also, that the applicant has not demonstrated that net gains in biodiversity would be achieved.
5. At the Hearing, the LPA confirmed that the reference to protected species was on oversight. Nevertheless, the applicant's costs application was based on the assertion that on the evidence provided by its Ecologist, including an email from the County Council's Ecologist, that there was an agreed position in respect biodiversity enhancements.
6. I note that there were discussions between the applicant's Ecologist and the County Council's Ecologist about the provision and use of an offsite receptor site to provide the biodiversity net gain requirement for the development.
7. However, whilst the County Council Ecologist referred to the use of a condition, the applicant's Ecologist referred to the receptor site being secured under a legal agreement. Despite this, the draft legal agreement did not make provision

for this. Therefore, and irrespective of some miscommunication between the County Ecologist and the LPA, I am not persuaded that there was an agreed approach to how the receptor site and provision of the biodiversity net gain would be secured.

8. Moreover, the Council County Ecologist is a consultee on the planning application, and at the time the LPA was responsible for determining the planning application. Therefore, it would have been at the LPAs discretion as to whether or not the receptor site and associated mitigation should be secured by a condition or a legal agreement. Indeed, at the Hearing the applicant confirmed that the receptor site had not been legally secured by him.
9. Therefore, even though I have found in favour of the applicant's appeal and have agreed to a condition in respect of the receptor site and biodiversity net gain. This was as a consequence of the discussions at the Hearing.
10. As such, I do not consider that the LPA in taking a precautionary approach towards how the receptor site and the biodiversity net gain would be secured and using this as a putative reason for refusal, amounts to unreasonable behaviour.
11. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a partial award of costs is not justified.

M Aqbal

INSPECTOR