



Costs Decision

by **D Cramond** BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th April 2023

Costs application in relation to Appeal Ref: APP/C1435/W/22/3307184 Gatehampton, Station Road, Berwick, BN26 6SZ

- 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 Charles Lewis for an award of costs against Wealden District Council.
 - The appeal was made against the refusal of an application, Ref WD/2021/0440/F, which sought planning permission for the demolition of garage and summerhouse to the existing property and construction of 3 no. detached two-storey three-bedroom dwellings, all in accordance with the nationally described space standards.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (guidance) 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. Unreasonable behaviour may be either procedural or substantive.
 3. The Appellant argues that there has indeed been unreasonable behaviour by the Council.
 4. The argument is put that following the late introduction of a surface water drainage reason for refusal, the expense of a Drainage Consultant was required to provide a response outlining options for dealing with surface water. Notwithstanding that the Appellant feels this should have been covered by a pre-commencement condition. It is underlined that by not withdrawing refusal Reason 4, the Appellant has had to instruct professional technical consultants to provide further response, which is considered to be unnecessary given the clear and robust original submission relating to surface drainage matters.
 5. In any event the Appellant argues that the content of the appeal papers only goes to show that the draft officer's report, to the effect that there were no valid grounds to refuse planning permission, was correct. As a result of all the Council's actions the Appellant has had to pay for consultants to prepare and submit a Planning Appeal, and this is considered to be an unnecessary expense – the Council were able to grant permission and should have done so.
 6. There thus would appear to be two aspects to the Appellant's claim – 1) that surface water matters could and should have been dealt with by planning
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- condition and 2) that in any event the development as submitted should have been approved; the positive draft report should have been followed through.
7. The Council rebuts the Appellant and says it was considered inappropriate to condition surface water drainage due to insufficient information. Whilst drainage details can be conditioned all schemes should initially demonstrate, at least as part of a high-level exercise, that appropriate surface water drainage, can be achieved on site. There were known issues with regard to infiltration methods of drainage in this area and the Council felt no certainty regarding the delivery of proposed off site drainage. The fear was a condition for surface water drainage could have led to the possibility of an unimplementable scheme and/or scheme changes. The Council feels that is a reasonable stance.
 8. The Council underlines that concerns with surface water drainage were drawn out during the consideration of the application, referenced in the officer's delegated report and listed as a reason for refusal. They were not raised specifically but the Council feels the onus is on the applicant to ensure their application is accompanied by sufficient information to demonstrate acceptability. The Council did also use its Drainage Officer to consider the appeal papers and additional information therein, but the opinion was the objection should continue and the reasoning was explained to the Appellant via appeal documents. Drainage options all rely on third party agreements and none were evident. Thus, drainage concerns continue from the Council's perspective; there is still fear there may be increased flood risk.
 9. On the more general matter of approval versus refusal the Council acknowledges that the case officer had originally reached a certain conclusion. However, after an internal review it was made clear by email to the applicant that despite earlier without prejudice views the scheme as proposed was not acceptable and would be refused within any formal decision. This was also conveyed to the agent and acknowledged accordingly. The Council underlines that appeal papers clearly stated that comments raised about the draft officer report have no weight as they do not reflect Council's final formal decision to refuse the scheme. In terms of the refusal the Council argues that the delegated report, the decision notice and the Appeal Statement are unambiguous in setting out the harm that would be caused if the proposed development were to be approved. The Council says it provided substantive and procedural evidence to support its reasons for refusal.
 10. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or partial award of costs.
 11. I recognise that an appeal process can be time and fee consuming and that professional assistance comes at a cost. However, as a general point I would say that to my mind the Council has not acted unusually, has been seen to be seeking to engage constructively during the application process, and has been clear in what it sees as necessary information. Reasons for the judgements it reached were given before and at the time of the determination and throughout the subsequent appeal process.

12. On surface water drainage, as it happens, I do not agree with the conclusions reached by the Council on the potential to use a pre-commencement condition related to surface water drainage. Having said that this matter was somewhat borderline in my mind and reached only when I had carefully considered all the appeal papers including the drainage reports which the Appellant claims were not necessary. At no point was there any firm surface water drainage solution locked to this site. My optimism that one could be found was a degree higher than the Council's. In my opinion it was beholden on the Appellant to explore this question of drainage both at application and appeal stage in the detail undertaken by the paid consultant. The work was necessary to inform the decision maker and I would have thought that the Appellant might wish to know where drainage matters stood. Furthermore, the reports might have helped to unlock the site had I been minded to allow the appeal and may be useful to the Appellant in the future.
13. On the wider question as to whether the Council should have adhered to the initial leanings and granted planning permission, I can see that the availability of an officer's draft report which pointed towards approval of scheme would feature strongly in the Appellant's mind. However, I do think the Council fully explains the 'draft' and 'without prejudice' stages it went through. There will almost always be a degree of subjectivity in any planning decision but it seems to me that the reasons for refusal clearly set out and specify unequivocally the concerns of the Council and cross-refer to applicable policies. It was the Appellant's choice to appeal the formal decision reached by the Council, opinions differ between the principal parties as to the robustness of the reasons for refusal, and I have given my opinion on that.
14. It would appear to me that the Council dealt with the reports and plans before it, and all other material considerations, and reached a not wholly unsurprising or illogical decision on the submissions. I am not persuaded that there was any malpractice in its approach to either the matter of surface water drainage or the determination of the application generally. I would defend the Council's approach and assertions in the round as not being unsubstantiated and its actions throughout the process as not being irrational or procedurally improper.
15. I therefore find that unreasonable behaviour, whether procedural or substantive, resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR