
Costs Decision

Site visit made on 17 February 2023

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Costs application in relation to Appeal Ref: APP/C1435/W/22/3296480 Land at Sharnfold Road, Hailsham Road, Stone Cross BN24 5BU

- 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 Hop Farm Real Estate Ltd for a full award of costs against Wealden District Council.
 - The appeal was against the Council's decision to refuse outline planning permission for a residential development of up to 31 units, with all matters reserved save for access.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The guidance makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal.
3. The applicant's claim is based on the consideration that the appeal scheme was considered acceptable by officers and, accordingly, it was recommended that outline planning permission be granted. The Council's planning committee, despite its officers' recommendation, resolved to refuse planning permission.
4. PPG Paragraph 049 states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal, and also vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. With regard to the above the applicant, whilst accepting that Councils' planning committees are not bound to follow the advice of their officers, makes the point that any overturned recommendation requires that a Council's reasons for refusal should be reasoned and substantiated with cross reference to up-to-date planning policies and the National Planning Policy Framework (the Framework).
6. The Council resolved to refuse outline planning permission and gave reference to four particular issues; the effect of the proposal on the character of the surrounding area, the site's location outside the development boundaries (as set out in the Wealden local plan, adopted in 1998), the amount of traffic that

would be generated from the proposed development, and also flood risk matters. In the event, subsequent to the appeal being lodged, the Council decided to offer no evidence on the latter two points, but that still left two substantive issues which needed to be addressed on this locally contentious scheme.

7. Irrespective of my findings as to the proposal's planning merits the character of the immediate area would obviously change should the development be implemented. The degree of impact is probably a subjective assessment but it would be unreasonable of the applicant to have little or no regard for the views of other interested parties on the basis that the Council officers had given the proposal a favourable recommendation. Indeed, the applicant's statement that *"...the Council is considered to have prevented and delayed development which should clearly be permitted..."* is somewhat sweeping and dismissive of other persons or bodies with contrary views.
8. Turning to whether or not the site is in an appropriate location for new housing development, the local development plan as a whole might not be in conformity with the contemporary advice within the Framework. Further, in terms of spatial strategy, the Council's Core Strategy might be less rigid than the 1998 local plan, but that does not mean that policies GD2 and DC17 thereto, which indicate that new housing outside the development boundaries should not be allowed, have been revoked. Instead, when determining such proposals the decision maker has to decide what degree of weight should be given to the relevant policies.
9. The fact that, in this instance, I afforded the said policies little weight, having also taken into account the rather less constrained policy SPO3 of the Council's Core Strategy, is not determinative in itself due to other factors involved. Indeed, the recent unsuccessful appeal (*APP/C1435/W/22/3297976*) relating to new housing development on a site nearby, despite the recognised absence in the Wealden District Council area of a five year housing land supply, is indicative of such.
10. To summarise, the Council was quite entitled to reach the decision it did and for the reasons given above I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
11. I therefore refuse this application for an award of costs.

Timothy C King

INSPECTOR