



Costs Decision

Site visit made on 28 March 2023

by Robert Naylor Bsc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Costs application in relation to Appeal Ref: APP/M3645/W/22/3296968 Branford Wells, Brickhouse Lane, Newchapel, RH7 6HY

- 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 Central Central Projects Ltd for a full award of costs against Tandridge District Council.
 - The appeal was against the refusal of an application for planning permission for the change of use of agricultural buildings to 5no. dwellings, with associated carport and landscaping and part demolition of lean-to elements (revision to approved scheme 2021/1218).
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Decision

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

Reasons

2. The Planning Practice Guidance (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. Unreasonable behaviour can be procedural, or it can relate to the substance of the matters under consideration as part of the appeal.
3. Paragraph 049¹ of the PPG states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted and refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The applicant submits that the Council has acted unreasonably in that it has failed to substantiate its reasons for refusal and made vague, generalised, or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. The applicant further contends that the Council has failed to be proactive and enter into meaningful dialogue with the applicant; failed to properly consider the fall-back position and subsequently acted contrary to, or not following, well-established case law; and failed to submit an appeal statement.
5. The Council considered the fall-back position as evidenced in its application report and I have agreed with its conclusions on this matter. Therefore, I do not consider it has acted unreasonably in this respect.

¹ Appeals Paragraph: 049 Reference ID: 16-049-20140306

6. I understand the concerns of the applicant regarding the Council's alleged behaviour during the determination of the planning application. However, the costs regime exists to reimburse costs which have been incurred by the receiving party during the process by which the Secretary of State's or Inspector's decision is reached. Furthermore, although the Council has not submitted an appeal statement, I have enough information in front of me within the application report and the decision notice to reach a decision.
7. In this case, the Council refused the appeal scheme for six reasons. With regard to reason 1 the Council considered the development represented inappropriate development within the Green Belt, and no very special circumstances were presented that would outweigh the substantial harm caused through its inappropriateness. I find in reaching a decision the Council did consider the development in respect of the harm to the surrounding Green Belt and in reaching a conclusion on this matter was reasoned in their analysis. As such I am satisfied that the Council has shown that it was able to substantiate this reason for refusal.
8. In respect to reasons 2 and 4 the Council considered the proposal would fail to reflect and respect the character and appearance of the site and surrounding area, and would result in harm to the setting of the Grade II listed building at Branford Wells. These reasons for the refusal set out in the decision notice are complete, precise, specific and relevant to the application. They also clearly state the relevant policies of the Tandridge District Core Strategy (2008) and the Tandridge District Local Plan: Part 2 – Detailed Policies (2014) and that the proposal would be in conflict with these. These reasons have been adequately substantiated by the Council in its Officer Report, and demonstrates how the proposal would result in unacceptable harm.
9. For the reasons set out in the appeal decision I too have concerns over the proposed scheme with regard to character and appearance and the setting of the Grade II listed building. I came to that decision on the basis of my consideration of the details and merits of the scheme, having regard to all the evidence and representations submitted. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns in respect to these issues which justified its decision on these matters.
10. In regard to reason 3, whilst I have reached a different view on the matter relating to outlook, this matter is one of judgement for the decision maker. Nevertheless, I concur with the Council's assessment in respect to the lack of adequate and accessible private external amenity space. This reason for refusal is clear and made with reference to relevant policies in the development plan. I am satisfied therefore, there is sufficient information before me to enable me to understand the case made by the Council. It follows that I am satisfied that the Council has, advanced a case, in the form of the Officer Report and decision notice, that in its opinion, indicated that the proposal was contrary to the development plan. Therefore, I cannot conclude that the Council had behaved unreasonably in respect to this issue.
11. The applicant produced an Energy Statement (ES) as part of the appeal which demonstrates that the scheme could achieve the minimum 10% saving in CO₂ emissions through the incorporation of on-site renewable energy technologies.

I have found that subject to a suitable condition the applicant has shown that measures could ensure that the proposal could reduce the causes of climate change through sustainable measures. I appreciate that the Council has provided no contrary evidence to the findings of the ES, particularly given that they have not submitted a statement of case. However, no ES was submitted with the application, and without this information the Council was unable to determine whether or not the minimum 10% saving in CO₂ was achievable. Therefore, in my view, the applicant has not been put to unnecessary expense in providing evidence to demonstrate that the proposal could achieve the policy requirements.

12. In respect to reasons 1, 2, 3, 4 and 5 I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
13. However, in this case, the County Highway Authority concluded that the degree of on-site parking proposed was acceptable in this location. Little evidence was put forward by the Council to support its reason 6 for refusal and establish that there was not sufficient on-site parking provision to serve the development. A suitable parking layout, in my opinion could have been secured through a condition, had the scheme otherwise been found as acceptable.
14. In respect to reason 6 I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

15. In exercise of the 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 Tandridge District Council shall pay Central Central Projects Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's sixth reason for refusal, which concerned the on-site parking provision matters in relation to this development.
16. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Robert Naylor

INSPECTOR