



Costs Decision

Hearing held on 20 June 2023

Site visit made on 20 June 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 3rd July 2023

Appeal Ref: APP/X2220/W/23/3314870

Manor Farm, Willow Woods Road, Little Mongeham, Kent CT14 0HR

- 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 appeal is made by Mr R Ledger for a full award of costs against Dover District Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for a proposed development described as change of use of land to an airfield to include a runway, helipad, erection of 2no. aircraft hangars, flight office and toilets, workshop/plant storage building, glamping for 10no. pitches, associated parking and a vehicular access track.
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Decision

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

Preliminary Matters

2. The application and the Council's response were each made in writing.

Reasons

3. 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.
4. The applicant asserts that the Council behaved unreasonably in relation to each of the reasons for refusal, and on grounds involving behaviour prior to the appeal. Here the PPG makes clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal itself, though behaviour and actions at the time of the planning application can be taken into account.
5. I summarise the applicant's claim as being that the Council prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

First Reason for Refusal

6. The applicant contends that the Council's evidence did not support its conclusion that the development would have a materially harmful effect in relation to noise, and that this was not correctly reported to the Council's Committee.

7. Howsoever officers chose to present the case to the Committee, Committee members would however have had access to the case file, and thus the opportunity to inform themselves of the evidence.
8. Insofar as the Council's evidence clearly did identify adverse noise effects, the materiality of these effects was itself open to further consideration. Within this context the Council could attach weight as it saw fit.
9. The above being so, the Council did not behave unreasonably on the grounds claimed.

Second Reason for Refusal

10. The Council's second reason for refusal concerned the effectiveness of mitigation measures in relation to habitats sites. The applicant points to the fact that Natural England raised no objection subject to these measures being secured, and the submission of a Unilateral Undertaking (UU) just prior to determination.
11. The Council has confirmed that the drafting of its reason for refusal pre-dated submission of the UU, and that UU was not apparently given detailed scrutiny prior to the Committee meeting. Each can be considered unreasonable.
12. The UU was however clearly not fit for purpose. Therefore, even if it had been considered in greater detail the matter could not have been resolved in the applicant's favour. Though it would clearly have been appropriate for the Council to update the wording of the second reason for refusal, it remains broadly relevant.
13. Whilst the applicant additionally claims that the Council could have worked towards a resolution of the habitats issue by engaging in better communication, the issue still remains unresolved after the submission of 2 further UUs. Indeed, this was ultimately the reason that I dismissed the appeal.
14. The above being so, though I have identified some unreasonable behaviour on the part of the Council, this did not cause the applicant to incur unnecessary or wasted expense in the appeal process.

Conclusion

15. For the reasons set out above I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated, and that an award of costs is not therefore justified.

Benjamin Webb

INSPECTOR