



Costs Decision

Site visit made on 6 June 2023

by A James BSc (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2023

**Costs application in relation to Appeal Ref: APP/U1430/W/22/3307160
British Red Cross Society Centre, Highfields, Burwash, East Sussex
TN19 7HE**

- 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 Mrs Karen Brain of Matrix Claims Services Ltd for a full award of costs against Rother District Council.
 - The appeal was against the refusal of planning permission for demolition of an existing building and erection of dwelling with associated parking and landscaping.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The applicant contends that the Council has behaved unreasonably both procedurally and substantively and is seeking a full award of costs for the following reasons:
 - Lack of corporation and engagement by the Case Officer during the determination period.
 - Inaccurate and untrue information within the delegated report.
 - The Council failed to produce evidence to substantiate the part of the reason for refusal relating to trees.
 - Vague, generalised and inaccurate assertions about the proposal's impact on the street scene and the High Weald Area of Outstanding Natural Beauty (AONB).
 - The decision maker failed to have regard to the government policy, in this case the National Planning Policy Framework (the Framework).
4. As will be seen from my appeal decision, I have reached a different conclusion to that of the Council. Nonetheless, the Council assessed the application against national and local planning policies and provided a detailed report and appeal statement, setting out where in their view the harm would arise. It must be acknowledged that any assessment of harm to the character and appearance of an area is subjective. The Council found that the harm to the AONB provided a clear reason for refusing the application and that the presumption in favour of sustainable development set out at Paragraph 11d of the Framework was not applicable. Even though I have come to a different

conclusion, this does not mean that the Council acted unreasonably in reaching its judgement.

5. Whilst the delegated report incorrectly refers to the proposal as a 'static mobile home', the size and design of the proposal is evident from the submitted plans. The design of the proposed dwelling was not a reason for refusal and I do not consider that this inaccuracy has resulted in additional expense during the appeal process for the applicant.
6. Although the Council's delegated report does not clearly set out where the conflict with Policy EN5 of the Rother Local Plan Core Strategy September 2014 arises, the Council has addressed this matter in their appeal statement. Policy EN5 amongst other matters, seeks to protect and enhance nationally designated sites and is therefore relevant to this appeal.
7. There is limited evidence before me of any lack of co-operation or engagement with the Case Officer during the determination period. I do not find that the Council has acted unreasonably in this regard.
8. The Council's delegated report refers to an abundance of trees on the appeal site. The Council allege that the loss of trees would harm the character and appearance of the area. The Council has confirmed that it did not carry out a site visit for this application, but did visit the site to display a site notice. Had a detailed site visit been carried out, then it would have been evident that there are no trees (with the exception of a self-seeded sapling) on the site. Covid 19 restrictions had been lifted, prior to the application being submitted and the Council provide no justification on why a detailed site visit was not carried out. Given that the site is visible from the public realm and there is public access through the site, a site visit could have been carried out safely.
9. The Council contend that the previous applications were refused on similar grounds. However, whilst the previous applications (RR/2002/1805/P, RR/2019/2193/P and RR/2021/2075/P) mention surrounding trees, loss of trees did not form part of any reason for refusal.
10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the alleged harm to the existing trees and a partial award of costs is therefore warranted.

Costs Order

11. 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 Rother District Council shall pay to Mrs Karen Brain of Matrix Claims Services Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred relating to the submission of evidence regarding trees; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. 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.

A James INSPECTOR