



Costs Decision

Hearing held on 14 and 15 June 2023

Site visit made on 14 June 2023

by M Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2023

Costs application in relation to Appeal Ref: APP/C1435/W/23/3317468 Clear View Farm, Chiddingly Road, Horam, Heathfield TN21 0JJ

- 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 Whitehall Homes LLP for a partial award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for redevelopment of the existing site and equestrian facilities to provide 51 residential dwellings with associated access works, garaging, car parking, site landscaping and woodland management.
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Decision

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

The submissions for Whitehall Homes LLP

2. The submission was made verbally at the hearing. The main thrust of the applicant's case is that the Council's actions amount to unreasonable behaviour in respect of both procedural and substantive matters. This is contrary to the applicant's stance, which was to engage positively and pro-actively with the Council. Firstly, the applicant engaged at pre-application stage with the Council, but no written reply was received. Furthermore, during the course of the planning application, the Council provided limited feedback, and no feedback was received in relation to ancient woodland concerns until shortly before a final decision on the planning application was made, which did not allow sufficient time for further engagement. In addition, the Council's officer report contained errors, their first reason for refusal was 'poorly worded' and vague, and the second reason for refusal (ancient woodland) was not supported by detailed objective analysis. In short, any concerns relating to drainage and the ancient woodland could have been secured by the imposition of a planning condition. Had this occurred, then even if an appeal had been forthcoming, it could have been dealt with by written representations as opposed to a hearing.

The response by Wealden District Council

3. The Council's response was made verbally. Pre-application meetings were held, and the concerns relating to the overall design of the scheme were communicated. In terms of the ancient woodland, paragraph 180(c) of the National Planning Policy Framework is clear that development resulting in the deterioration of ancient woodland should be refused, so the Council were entitled to do so. In addition, further mitigation measures were presented for the first time immediately prior to the hearing, giving the Council insufficient time to address. The Council add that they attempted to engage with the

applicant by agreeing an extension of time in relation to the planning application determination date, but this agreement was not forthcoming.

Reasons

4. I acknowledge the applicant's frustration at the way the Council dealt with the proposal (and various iterations of it) at pre-application and planning application stage. I have taken submissions made by both parties in relation to alleged actions pre-appeal, but ultimately, the Planning Practice Guidance (PPG) advises that costs awards should relate to the demonstration of unnecessary or wasted expense in the appeal process, along with unreasonable behaviour.
5. Without repeating the reasoning contained in my S78 decision, I agreed with the Council that the scheme was not acceptable for reasons relating to its design, and that it was contrary to the development plan. The PPG sets out that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. That is the case here.
6. In relation to the second reason for refusal, the scheme proposed works in an ancient woodland. I accept that the Council's case did not include sufficient detailed analysis to counter the detailed technical analysis commissioned by the applicant to demonstrate how impacts on the ancient woodland could be sufficiently mitigated. Be that as it may, my conclusion on the scheme's acceptability in this regard relied in part on amended illustrative drainage plans, which were submitted shortly before the hearing. It was with the benefit of this additional drainage information that I was able to conclude with sufficient certainty that deterioration of the ancient woodland could be avoided.
7. It follows, therefore, that at the time the Council made their decision on the planning application, they did not have the same level of information, and so their decision to refuse the planning application was not unreasonable. Nor was it unreasonable to proceed with their objection when this information was not forthcoming until late in the appeal process. With this in mind, neither do I accept the applicant's assertion that the associated hearing could have been avoided altogether.
8. I understand that several inconsistencies are apparent in the Council's officer report, but I fail to see how they were so manifestly erroneous that they altered the Council's overall case. Moreover, the Council's statement of case accompanying the appeal articulated their concerns and provided an opportunity for the applicant to respond as part of the appeal process. For the same reasons as set out above, the Council's overall decision to refuse planning permission and subsequent actions during the appeal process were not unreasonable.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Woodward INSPECTOR