The Planning Inspectorate

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 Wealden District Council for a full award of costs against Whitehall Homes LLP.
- 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.

Decision

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

The submissions for Wealden District Council

2. The costs application was submitted in writing at the hearing. In summary, the Council's application relates to the nature of the proposed development, which was contrary to the development plan, and the harmful effect of the proposal on ancient woodland. An admission of harm to the ancient woodland was demonstrated by the way that the applicant attempted to amend the proposal through the appeal process by submitting revised drainage proposals shortly before the hearing. Therefore, on substantive and procedural grounds, the applicant's unreasonable actions have resulted in unnecessary and wasted expense in the appeal process on a proposal that clearly should not have been permitted.

The response by Whitehall Homes LLP

3. The response was made orally at the hearing. They allege that the Council's costs application was retaliatory, and it was disingenuous for their written submission to state that they wanted to consider how the hearing unfolded before making their submission, when their costs application was clearly pre-prepared. They also reiterate that there would be no unacceptable impact on the ancient woodland, and that evidence has been provided throughout the planning application and appeal process to demonstrate this.

Reasons

4. Dealing with the procedural point first. The Council were entitled to make an application for costs during the appeal. This was duly submitted before the hearing closed. Whatever the motivation for the application, I am obliged to consider the merits of it.

5. Nevertheless, parties in planning appeals normally meet their own expenses and a costs award is only warranted, according to the Planning Practice Guidance (PPG), when a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

6. The applicant's submission of amended illustrative drainage proposals did not fundamentally alter the Council's objection to the proposal, despite their late submission at the hearing. This additional information did not necessitate an adjournment or expense associated with additional preparatory work. Indeed, the Council were already present at the hearing to defend their reason for refusal relating to the ancient woodland. I do not agree that the submission of these plans was either unreasonable, nor resulted in wasted expense.

7. Whilst I found against the development plan, and broadly agreed with the Council in relation to the scheme's impact on the character and appearance of the area, I did not find against the applicant in relation to the ancient woodland. Moreover, the Council were unable to demonstrate a five-year housing land supply. The applicant also advanced other material considerations, including national planning policy considerations and a raft of benefits. Therefore, as reflected in my S78 decision, my ultimate decision to dismiss the appeal was based on a range of factors weighing both against the proposal and in favour of it. It cannot be said that the appeal had no reasonable prospect of succeeding[1].

8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Woodward

INSPECTOR

[1] None of the circumstance listed in Paragraph: 053 Reference ID: 16-053-20140306 of the planning practice guidance have been evidenced in this case.