
Costs Decision

Site visit made on 12 July 2023

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2023

Costs application in relation to Appeal Ref: APP/B9506/W/22/3312865 Sandy Balls Holiday Park, Godshill SP6 2JZ

- 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 Greg Lashley (Away Resorts) for a full award of costs against New Forest National Park Authority.
 - The appeal was against the refusal of the Council to grant planning permission for use of land for the siting of 108 holiday lodges (static caravans) including the relaying of 108 bases, access roads, parking spaces, refuse enclosures and associated landscaping, without complying with a condition attached to planning permission Ref 18/00139, dated 20 July 2018.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either procedural, having regard to behaviour in relation to completing the appeal process, or substantive, relating to the planning merits of the appeal. The applicant is seeking a full award of costs on procedural and substantive grounds.
4. The application for costs largely relies on the fact that the Council Officers recommended that planning permission be granted for the proposal, but that Council Members acted unreasonably by taking a different course of action without adequate reasons to do so, resulting in the applicant incurring costs associated an unnecessary appeal.
5. The applicant specifically cites the behaviour of Members and Officers of the Council during the Planning Committee meeting, and alleges that the actions carried out in association with the Committee's determination of the planning

application did not accord with the Council's *Local Protocol for Dealing with Planning Decisions* (July 2020).

6. I have noted the applicant's frustration in respect of some aspects of the Committee debate, having regard to the submitted transcript of the Committee Meeting and copies of emails between the applicant's agent and the Council prior to the Committee Meeting. However, these procedural concerns relate to the application determination process rather than the appeal process.
7. Whilst the Guidance states that costs cannot be claimed for the period during the determination of the planning application, it advises that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded, and that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.
8. Members took a contrary to view to that contained within the Planning Officer Report to the Committee, and I have noted the views of the Council's Officers. However, the decision is one which is a matter of judgement. The Council Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view.
9. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
10. My Decision, which accompanies this costs decision, explains why, although I do not agree with the Council Members in respect of the fourth reason for refusal, I have dismissed the appeal. As such, the manner by which the Planning Committee process was conducted has not resulted in an appeal which could have been avoided altogether.
11. My Decision confirms that, in taking account of the wording of the previous development plan policies referred to in the original condition, together with those referenced in the Council's refusal reasons and appeal statement, I have found the impact of the proposal upon neighbouring living conditions to be a main issue in the determination of the appeal, in addition to matters related to the conservation and protection of the National Park qualities for which it was designated.
12. My Decision also explains why I have found the current development plan policies referred to by the Council to be relevant to the Council's reasons for refusal. As such, I find that the Council's objections in respect of Dark Sky and animal welfare impacts to be relevant, and I do not consider that the Council has unreasonably introduced additional matters outside the scope of their decision on this Section 73 application.

13. Notwithstanding that the Case Officer accepted the conclusions of the applicant's Lighting Report¹, I have taken full account of this report, together with the applicant's supporting *Transport Assessment and Framework Travel Plan* in determining this appeal. My accompanying Decision explains why I have not accepted the conclusions of the former, and how my conclusions in this respect support the Council's first and third reasons for refusal, which I have agreed with.
14. My decision also explains how I have found the policy reference within the second reason for refusal to be relevant. It will be seen from my Decision, that I do not agree with the Council's conclusions in respect of the fourth reason for refusal. However, having regard to the evidence provided by the Council in its appeal statement in regard to this matter, and the relevance I have found to Local Plan Policy SP6, I do not consider that the Council has been unreasonable in including this reason for refusal.
15. Accordingly, I find that the Council's reasons for refusal, as set out in the decision notice to be complete, precise and specific to the application, and to clearly set out the current development plan policies with which the proposal would be in conflict.
16. The Council's substantiation of its reasons for refusal within its appeal statement is brief. However, I do not find that this, in itself, amounts to unreasonable behaviour which has resulted in the applicant incurring unnecessary or wasted expense in the appeal process, having regard to my conclusions in respect of each reason for refusal, which included consideration of reports that had already been submitted by the applicant at the planning application stage.
17. The Council's reasons for refusal do not specifically refer to the impact of the proposal upon the New Forest and River Avon European Sites. However, the requirement to mitigate against potential harmful impacts arising from recreational impacts and nutrients associated with the proposal was confirmed by the Officer Committee report, and the Council was satisfied that the matter could be satisfactorily addressed by means of a legal agreement and relevant planning condition.
18. The above mitigation is a requirement of the Habitats Regulations, whether or not the proposal lies within a National Park. As such, I do not find that the applicant has incurred unnecessary costs in this respect as a result of the Council failing to undertake a balancing exercise that considered the environmental benefits of the agreed mitigation to outweigh the harm identified in its reasons for refusal.
19. Accordingly, I find that the Council was entitled to refuse the application and defend the appeal and has not acted unreasonably in so doing.

Conclusion

20. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

¹ Appraisal of Night Time Lighting (SLR April 2020)

S Leonard

INSPECTOR