



Costs Decision

Site visit made on 3 October 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Costs application in relation to Appeal Ref: APP/L1765/W/22/3307421 Land to the north of Dradfield Lane, Soberton, Hampshire SO32 3QD

- 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 Mr Nick Butler for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission for proposed development described as *"improved farm access (retrospective), with the erection of 1.75m high oak access gates and polytunnel."*
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). "Unreasonable" has its ordinary meaning, as established by the Courts¹. At paragraph 031, the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. The applicant sought an award of their costs in this appeal on substantive grounds. Summarised, the applicant's case is as follows. The Council failed to take drainage works previously undertaken as 'permitted development' into account when considering the application. As the development had already been carried out, the Council should have been able to ascertain that there had been no increase in the risk of flooding. The Council had been unable to produce evidence of increased flooding associated with the development and their reason for refusal was therefore unfounded.
4. At paragraph 049, the PPG advises that a Council risks an award of costs on substantive grounds where an application is unreasonably refused. Examples of unreasonable behaviour in this regard include where a Council fails to produce evidence to substantiate reasons for refusal on appeal or making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

5. The Council's written submissions in response to the appeal, including the Officer report and statement of case, provide a clear, logical and proportionate expansion of the reason for refusal in order to show why the application was refused. Since reference is made to the drainage works already undertaken by the applicant, both during the application and in the appeal, it is evident that the Council took those works into account in its assessment.
6. At the application stage, the Council's Drainage Engineer advised that further details of the site drainage were necessary in order to establish that it was adequate to serve the development. Similar information was sought by the County Council in their consultation response. The information sought has not been made available. Since I was unable to ascertain the efficacy of the existing drainage in relation to the development by viewing it, it is highly doubtful that the Council could do so. In the absence of the information sought, I am unclear how the Council could have reached a different conclusion on whether the development ensured that there was no increase in flood risk. Representations made by a number of interested parties, both during the application and at the appeal stage, which refer to and include evidence of recent flood events at the site and in the vicinity, provide a significant measure of support for the Council's decision.
7. Consequently, the reason for refusal is founded in a body of significant, relevant and objective evidence and the Council has been able to substantiate its case at appeal. Following consideration of the available evidence, I shared the Council's conclusions.
8. As there has been no unreasonable behaviour on the part of the Council, the appellant cannot have incurred unnecessary or wasted expense in the appeal and the conditions for an award of costs have not been met.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR