



Costs Decision

Site visit made on 11 October 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2023

Costs application in relation to Appeal Ref: APP/J1535/W/22/3309937 Richmond Farm, Parsloe Road, Epping Green, Epping CM16 6QB

- 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 Aaron Mercer for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for continued use of the land for storage and sale of motorhomes and retention of existing hardstanding.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers the outstanding issues that subsequently made up the Council's two reasons for refusal, could have been resolved through further discussions and dialogue during the course of the application process. Thus, an appeal could have been avoided.
4. It is the applicant's view that the Council acted unreasonably by failing to attach substantial weight to the Emerging Local Plan, which removed the application site from the Green Belt. Also, that the Council's case officer incorrectly interpreted the independent assessment of the applicant's Shadow Habitats Regulations Assessment¹ (Shadow HRA) and did not afford the applicant the opportunity to discuss the findings or provide clarifications before a decision on the application was made.
5. The Council Officer Report includes a summary of the Transport Planners review of the Shadow HRA, which concludes, based upon the information presented within the applicant's HRA document, it is accepted that there are no outstanding HRA matters on the basis that the applicant agrees an appropriate methodology and level of financial contribution with the EFDC case officer.

¹ 'Shadow' Habitat Regulations Assessment, Richmond Farm, Epping Green, by Tyler Grange, dated 30th November 2021, TG Report No. 14172_R01_CA_CW.

6. Indeed, following consideration of the application on its merits alone, I have concurred with the Transport Planners, and I am satisfied that the financial contribution proposed in the Shadow HRA would be sufficient to mitigate potential adverse effects on the integrity of the Epping Forest Special Area of Conservation.
7. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
8. While the Council is not duty bound to follow the independent professional advice of the Transport Planners, it should clearly demonstrate on planning grounds why the proposal is unacceptable and provide clear evidence to substantiate that reasoning.
9. In this case, it is not entirely clear from the Council's Officer Report why it comes to a different conclusion to the Transport Planners and considers there to be insufficient evidence for the Council to be able to conclude, beyond reasonable scientific doubt, that the development would not have an adverse effect on the integrity of the EFSAC. No specific concerns are set out regarding the methodology or level of financial contribution set out in the Shadow HRA.
10. The Council's Officer Report explains that currently there is no strategy to deal with a situation where volume and distribution of development trips that are expected to travel through the EFSAC and/or its 200m buffer is unknown. However, this is not applicable in this case, as the Shadow HRA is guided by the Council's Air Pollution Mitigation Strategy² (APMS). The volume of trips was calculated at an AADT of 5.7 movements. In terms of distribution, while no further analysis or traffic modelling was undertaken to determine the volume and distribution of development trips, the proposed mitigation is based on a precautionary, worse-case scenario of all 5.7 movements.
11. It may be that the case officer misinterpreted the advice of the Transport Planners. However, it is clear from the Officer Report that they were aware of the evidence in the Shadow HRA.
12. In addition, it is clear from the evidence supporting the application that permission is being sought for a temporary period of three years. Given the planning history of the appeal site, I understand the concerns of the Council that the use may continue after this period. However, this would be a matter to be addressed at that time. It may be that the current use of the site is unauthorised, and I recognise that intentional unauthorised development can be a material consideration that weighs against the proposal. Nevertheless, this does not alter the parameters of the permission being sought to regularise the development and it is the duty of the Council to make a decision based on this.
13. For the reasons above, I am of the view that the conclusion in the Council's Officer Report relating to the effect of the development on the integrity of the EFSAC is unreasonable and does not adequately substantiate the stated reason for refusal of the planning permission. While, in the absence of a Section 106 Legal Agreement to secure the proposed financial contribution to the APMS, I

² Epping Forest Interim Air Pollution Mitigation Strategy: Managing the Effect of Air Pollution on the Epping Forest Special Area of Conservation (December 2020).

was unable to allow the appeal, this could have been addressed during the application process.

14. With regards to Green Belt, the Council's Officer Report includes advice from the Policy Team on the Local Plan Review. The Policy Team advise that, in terms of the criteria used to determine the appropriate weight to be given to an emerging Local Plan, the District's emerging Plan is positioned at the end of the spectrum that would afford it the greatest weight. It concludes that the emerging Plan should therefore be given substantial weight in the assessment of development applications.
15. Nonetheless, while the proposed amendments to the Green Belt boundary weighed in favour of the development, it is unclear how much weight this was afforded. Moreover, the effect of the development on the integrity of the EFSAC formed part of the Green Belt balance weighing against the development.
16. Following consideration of the application on its merits alone, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should reasonably have been permitted, subject to a Section 106 Legal Agreement to secure a financial contribution towards the APMS. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Cost Order

18. 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 Epping Forest District Council shall pay to Mr Aaron Mercer, the costs of the appeal proceedings described in the heading of this decision.
19. The applicant is now invited to submit to Epping Forest District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Hannah Guest

INSPECTOR