



Costs Decision

Inquiry held on 17 & 18 October 2023

Site visit made on 18 October 2023

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28/11/2023

**Costs application in relation to Appeal Ref: APP/F3545/W/23/3324114
The Plough Inn, 62 The Street, Icklingham, Bury St Edmunds, Suffolk,
IP28 6PL**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by West Suffolk Council for a full award of costs against Elveden Farms Limited.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for outline Planning Application (means of access to be considered) - (i) Conversion works to public house (class A4) to create 2 no. dwellings (class C3) (following demolition of existing extensions); (ii) construction of 7 no. dwellings and (iii) associated landscaping and car parking (previous application DC/17/0630/OUT).
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Decision

1. The application for a full 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 against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Examples of behaviour in the PPG that may give rise to a procedural award against an appellant include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
4. The Council's application is made on procedural grounds, and in summary that the appellant relied on substantial and new evidence when the appeal was made, which materially changed the nature of the proposal compared with the planning application. It is argued that the appeal process has been used to evolve the scheme, which the Council considers amounts to unreasonable behaviour that has caused unnecessary expense to be incurred in the appeal process.
5. Part 16 of the Procedural Guide: Planning appeals (England) (the Procedural Guide) advises that the appeal process should not be used to evolve a scheme, and that what is considered by the Inspector at appeal should essentially be the same scheme that was considered by the Local Planning Authority and interested parties at the application stage.

6. The development proposed has not changed at the appeal stage. However, the Procedural Guide is also relevant to changes to other aspects of proposals, such as proposals for mitigation. The Guide advises that where amendments are proposed, the Wheatcroft principles should be applied to ensure that parties to the appeal are not disadvantaged.
7. The new material included a new Ecological Impact Assessment (EIA) (CD7.1), a new Information for Habitats Regulations Assessment (IHRA) (CD7.2) and legal submissions (CD7.3) running to 1065 pages and described by the Council as being of a complex and technical nature.
8. The EIA submitted with the planning application has a 2019 base date and deals with the potential impact of the proposed development on bats and reptiles. Although the impact of the proposed development on those species is not a main issue in this case, the document provides updated survey evidence in a proportionate manner.
9. The single reason for refusal in this case relates to the effect of the proposed development on the Breckland Special Protection Area (SPA). The appellant's position is that the proposal would not have a likely significant effect on the Breckland SPA. However, in the event that the Council arrived at a different conclusion on that point during the determination of the planning application, offsetting proposals to avoid an adverse effect on the integrity of the SPA were included in the IHRA submitted with the planning application. These were to provide two new nest plots, each of 2 hectares in size, within arable land on the Elveden Estate, with locations varying from year to year depending on cropping rotation.
10. Part of the reason for refusal relates to those proposed offsetting measures. In response, the appellant's offsetting proposals were amended in the latest version of the IHRA accompanying the appeal. At the Case Management Conference held on 15 August 2023, a clear timetable and process for the submission of Proofs of Evidence was agreed, by 19 September 2023. In the event, that deadline was extended to 27 September 2023. In order to enable the parties to respond to Natural England's latest advice on the appeal proposal, I also afforded the parties the opportunity to submit rebuttal statements to respond to that advice, by 9 October 2023.
11. Whilst the Council argues that the appellant should have sought to resolve the matters at issue through the submission of a further planning application, the decision to appeal is a matter of judgement for the appellant. I am satisfied that the appeal process has provided a full and fair opportunity for the Council to respond to the evidence submitted with the appeal, including the changes to the proposed offsetting measures.
12. The Council also argues that the appellant's stance in relation to the issue of fractional stone curlew nest displacement was not raised during the planning application, nor as part of the legal advice dated July 2022. That is, however, not surprising given that the version of the Advice Note¹ containing reference to fractional nest displacement being indicative of tolerance of disturbance, rather than nest displacement, only became publicly available to the appellant after the refusal of planning permission.

¹ 'Advice to applicants where a development site is located within Breckland SPA, or the 1500 metre buffer zone' and its Annex A and Annex B

13. Overall, I find that the appellant has not behaved unreasonably in relation to procedural matters during the appeal process. Unnecessary or wasted expense, as described in the PPG has not been demonstrated and an award of costs is not justified in this case.

Sarah Housden

INSPECTOR