Costs Decision

Site visit made on 12 December 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Costs application in relation to Appeal Ref: APP/G2245/W/23/3316549
Singles Cross Farm, Singles Cross Lane, Knockholt TN14 7NG

- 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 J Sweeting for a full award of costs against Sevenoaks District Council.
- The appeal was against the refusal of planning permission for demolition of existing buildings and structures and their removal from the site, retention of existing stables and erection of a new dwelling, stables, store building and tractor sheds.

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 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. Paragraph 049 of the Planning Practice Guidance states that examples of unreasonable behaviour by local planning authorities include, failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact; and refusing planning permission on a planning ground capable of being dealt with by conditions.

4. The appellant asserts the Council took an incorrect approach in assessing the spatial impacts of the proposal and failed to properly consider the scheme's visual impacts, and thus acted unreasonably through failure to produce proper evidence to substantiate the reason for refusal, with vague, generalised and inaccurate assertions made about the proposals impact.

5. The delegated report provides comparison of the dimensions of existing and proposed buildings. Whilst the parties disagree on the net change in floorspace, both parties conclude that the proposal would provide an overall decrease in built volume on the site, thus appearing to reach similar conclusions regarding the spatial impacts of the proposal.

6. However, as set out in the delegated report, the council's assessment also included consideration of the scheme's visual impacts. Notably, this assessment had regard to the reduced height of the proposed extension of the stables and tractor store, as indicated at page 18 of the delegated report.

7. Assessment of visual impacts is subjective, to some degree. Whilst I have reached a different conclusion to the Council, its reasoning was clearly stated in the delegated report and as such I do not consider the Council failed to provide proper evidence or that its refusal was predicated on vague, generalised or inaccurate assertions.

8. The site is within an area identified as Source Protection Zone 3 and is located on a principal aquifer. Therefore, groundwater resources in the location of the appeal site are particularly sensitive. Paragraph 180(e) of the National Planning Policy Framework (the Framework) requires that development proposals should, wherever possible, help to improve local environmental conditions such as water quality.

9. The Environment Agency (EA) is a non-departmental public body with responsibilities for water quality and resources. The EA objected to the proposal because it considered the risks to groundwater from the proposed development to be unacceptable. The EA provides advice on the management of groundwater resources. Notably, it advised that adequate information was required to demonstrate that the risks posed by development to groundwater can be satisfactorily managed.

10. The appellant provided a drainage strategy which demonstrates how risks to groundwater would be managed thus overcoming the EA's objection and the Council's reason for refusal. However, this information was provided only after the Council issued its decision. The Council indicates that the submission of the drainage strategy allowed it to review the risks to groundwater in light of the evidence presented and to seek further expert advice from the EA.

11. Whilst the Council's Environmental Health team put forward conditions relating to a phased report of contamination and foul water drainage, such conditions do not principally relate to the management of groundwater resources and would not be sufficient to account for the sensitivity of groundwater resources at the site.

12. In addition, due to the proximity of the proposed dwelling to the activities of the existing livery, the Council's Environmental Health team indicated that an acoustic assessment would be required pre-determination, as set out in its comments of 02 September 2022. I note these comments were made close to the date of the Council's determination and the appellant feels they were not made aware of the requirement for the acoustic assessment.

13. However, paragraph 191 of the Framework requires planning decisions ensure new development is appropriate for its location, including the effects of pollution on living conditions. It is the responsibility of the appellant to provide information to demonstrate that a suitable standard of living conditions would be achieved, yet the acoustic assessment was provided only after the Council's determination.

14. The appellant incurred costs conducting the drainage strategy and acoustic assessment, as submitted with the appeal. However, such information was necessary to demonstrate the groundwater resources would be adequately managed and that suitable living conditions would be achieved.

15. In the absence of such information, it would be unclear whether the development could be made acceptable. In this circumstance, such conditions would not be enforceable and would not satisfy the Framework's tests. Therefore, I am satisfied that planning permission was not refused on planning grounds capable of being dealt with by conditions.

16. The appellant's costs application also refers to the disagreement between the parties as to whether the site access comprises part of the proposal. This did not form a reason for refusal and unnecessary expense does not appear to have been incurred. I have addressed matters relating to the access in my appeal decision.

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

E Dade

INSPECTOR