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## Costs Decision

Hearing Held on 7, 8 November and 14 December 2023

Site visit made on 7 November 2023

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date 22 January 2024**

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### **Costs application in relation to Appeal Ref: APP/U2805/W/21/3275791 Peasdale Hill Field, Asley Road, Middleton, Market Harborough LE16 8YP**

- 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 Joe Delaney for a partial award of costs against North Northamptonshire Council.
  - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for change of use of land for residential purposes for 5 gypsy and traveller pitches including the provision of hardstanding ancillary to that use.
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### **Decision**

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

### **The submissions for Mr Delaney**

2. The appellant submits that a partial award of costs is justified in relation to substantive matters relating to issues of ecology/biodiversity. He contends that the local planning authority (LPA) behaved unreasonably in refusing planning permission on a planning ground capable of being dealt with by conditions. Furthermore, the LPA failed to review their case following the provision of additional evidence and communication submitted by the appellant prior to the Hearing which resulted in wasted expense as a result of the appellant's agent (GPS) having to continue to liaise with expert Ecology Witnesses, both of whom then had to attend the Hearing to provide and explore the evidence.

### **The response by North Northamptonshire Council**

3. In response the LPA maintain that it was not unreasonably for the Council to maintain their objections in relation to matters of ecology/biodiversity. Whilst, as part of the appeal process the appellant provided a Preliminary Ecological Report (PEA), this did not provide all the information necessary and sufficient to determine a planning application. In addition, the updated PEA in relation to Biodiversity Net Gain (BNG) was only received eight days before the Hearing and still included errors which were corrected during the Hearing. A Unilateral Undertaking (UU) required to secure the implementation and maintenance of a BNG Scheme and habitat management and monitoring plan at the appeal site and adjoining land was only completed during the Hearing. It was therefore

not unreasonable for the LPA to maintain their objections through to the Hearing.

4. No surveys were undertaken in relation to bats, and the LPA state that they did not receive the correspondence submitted by GPS to PINS on 26 September 2022, which considered that matters relating to bats could be dealt with by condition. The LPA submit that even if it found that mitigation in relation to bats could have been dealt with by condition, there was no wasted expense during the appeal process as the appellant's Ecologist was required to attend in any event to deal with matters in relation to BNG.

## **Reasons**

5. The 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.
6. PPG advises that an LPA is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include, refusing planning permission on a planning ground capable of being dealt with by condition, where it is concluded that suitable conditions would enable the proposed development to go ahead<sup>1</sup>.
7. In addition, PPG advises that an LPA is at risk of an award of costs if they do not review their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management<sup>2</sup>.
8. It can be seen by my decision that in relation to ecology/biodiversity, I found that there would be no harm to these matters of acknowledged importance provided, if planning permission were to be granted, it would be subject to a condition requiring details of a Biodiversity Net Gain Scheme (BNG) and habitat management and monitoring plan to be submitted and agreed. I also noted that a UU had been provided which would secure the implementation and maintenance of the Scheme.
9. Nevertheless, the original planning application did not include a PEA and thus it was not unreasonable for the LPA to express concerns relating to the impact of the development on matters relating to ecology/biodiversity. Following the submission of the initial PEA as part of the appellant's statement of case in November 2021, the LPA Ecologist responded setting out her comments in relation to that assessment and the Great Crested Newt Survey Report prepared on behalf of the Residents Action Group. GPS response to those comments were submitted to PINS on 26 September 2022 in the form of copy email correspondence from their specialist advisor, RSK Biocensus. From PINS records I cannot be certain that this correspondence was forwarded to the LPA.
10. In summary, the email stated that no bat records or activity surveys had been carried out but confirmed that RSK Biocensus had identified the potential for roosting and commuting bats on the site. It was understood that no hedgerows or trees were to be removed, and thus the only potential impact for foraging bats would be the effect of any lighting, which could be mitigated by a

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<sup>1</sup> PPG: Paragraph: 049 Reference ID: 16-049-20140306

<sup>2</sup> PPG: Paragraph: 049 Reference ID: 16-049-20140306

condition. With regard to BNG, it was acknowledged that the assessment undertaken should have used the baseline before unauthorised works started. However, it was considered that to deliver the increase in biodiversity units required, it would remain the case that habitat creation would be required and maintained/managed for a period of 25-30 years and that this would involve utilisation of the adjoining field. It was suggested that habitat maintenance could be addressed through an appropriate legal agreement. Prior to the Hearing a revised BNG assessment was submitted and the appellant's offered to provide a UU to secure BNG. However, the UU was not provided in advance of the Hearing.

11. Whilst, as set out above, the outcome of my findings was that subject to the signed UU and a suitably worded condition, matters of ecology/BNG could be dealt with by condition. However, the necessary information to enable me to come to that decision was not available prior to the Hearing. Discussions which took place during the Hearing, including those relating to the condition of hedgerows, and other matters, resulted in further amendments to the BNG assessment. During the Hearing discussion was also necessary to establish how a condition could be worded to secure a detailed BGN Scheme, and how its management and monitoring could be secured in the long term, and on land outside of the appeal site.
12. I do not dispute that had the LPA Ecologist and RSK Biocensus liaised effectively before the Hearing, and a suitable condition and completed UU prepared in advance, then time at the Hearing and appearance of ecologist specialists may not have been necessary. However, that did not happen in this case. Furthermore, I am not convinced that this was entirely the fault of either party. Beyond responding to comments from the respective experts, I have not been provided with any evidence that would suggest that either party proactively sought, or refused to participate in discussions which might have resulted in an agreed and implementable solution prior to the Hearing. That said, the time spent at the Hearing, with contributions from specialist Ecologists representing their respective parties was necessary and assisted in my determination of this appeal.
13. For the reasons given above, I conclude that unreasonable behaviour by the LPA as described in the PPG, has not been demonstrated. No award of costs is therefore justified.

*Elizabeth Pleasant*

INSPECTOR