



Costs Decision

Inquiry held on 24th-26th October, 31st October, 7th-9th November and 14th -16th November 2023

Site visit made on 13th November 2023

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2024

Costs application 1

**Costs application in relation to Appeal Ref: APP/C1435/W/23/3321978
Land at Downlands Farm, Uckfield, TN22 3PU**

- 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 Wealden District Council for a full award of costs against Gleeson Land and John Alison Land and Research Ltd.
 - The inquiry was in connection with an appeal against the refusal of planning permission for Outline application (with all matters reserved except for access) for the erection of up to 424 no. Residential dwellings including affordable housing, the provision of vehicular, pedestrian and cycle access and separate emergency access from the Uckfield bypass (A22), pedestrian and cycle access from Snatts Road, open spaces including children's play space, sustainable urban drainage systems, associated landscaping, infrastructure and earthworks; and full application comprising creation of a strategic SANG, associated landscaping and car parking, and demolition of existing residential property and other buildings and provision of pedestrian and cycle access from Rocks Road, associated landscaping, infrastructure and earthworks.
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Costs application 2

**Costs application in relation to Appeal Ref: APP/C1435/W/23/3321978
Land at Downlands Farm, Uckfield, TN22 3PU**

- 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 Gleeson Land and John Alison Land and Research Ltd for a partial award of costs against Wealden District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for Outline application (with all matters reserved except for access) for the erection of up to 424 no. Residential dwellings including affordable housing, the provision of vehicular, pedestrian and cycle access and separate emergency access from the Uckfield bypass (A22), pedestrian and cycle access from Snatts Road, open spaces including children's play space, sustainable urban drainage systems, associated landscaping, infrastructure and earthworks; and full application comprising creation of a strategic SANG, associated landscaping and car parking, and demolition of existing residential property and other buildings and provision of pedestrian and cycle access from Rocks Road, associated landscaping, infrastructure and earthworks.
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Decisions

Costs application 1

1. The application for an award of costs is refused.
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Costs application 2

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

Procedural Matter

2. The costs applications were made in writing after the Inquiry closed following a prescribed timetable.

Costs application 1

The submissions for Wealden District Council and East Sussex County Council (ESCC)

3. The appellant contends that Gleeson Land and John Alison Land and Research Ltd acted unreasonably because:
 - The evidence provided by the Appellants to defend the safety of the main access and the pedestrian and cycle access in Fir Tree Grove is so obviously deficient that the appeal cannot succeed;
 - The case presented by the Appellants on loss or deterioration of Ancient Woodland was manifestly unreasonable. The appellant refused to accept the latest version of the Standing Advice (2022) and PPG; and the reasons put for there being no loss or deterioration as a result of boardwalks were unjustified and contradictory. As such the appellants case cannot succeed on the basis upon which it has been put.

The response by Gleeson Land and John Alison Land and Research Ltd

4. The appellant responds that:
 - The Council's case for costs does not take into account the totality of the Appellants' highways case and their criticisms focus on early comments from the highways authority. The Appellants' case is supported by an independent Road Safety Audit (RSA) which the Council's evidence did not criticise.
 - The Council has misrepresented the highway authority's concerns as regards the Main Access and Fir Tree Grove Access.
 - With regard to Ancient Woodland the Council's contention that the Appellants acted unreasonably is unjustified and contradictory. Planning Practice Guidance should not be treated as policy and is open to interpretation. The appellants reasons for there being no loss or deterioration as a result of boardwalks is supported by robust evidence and reflects the advice of statutory undertakers.

Reasons

5. Planning Practice Guidance 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. The costs application hinges on whether the appellants were clearly pursuing an application which could not reasonably be granted and that in doing so did

not exercise their right of appeal in a reasonable manner. Whilst I refer below to “the appellants”, this relates to the case put to me collectively by the appellants’ professional witnesses and Counsel.

7. Firstly in relation to the pedestrian access at Fir Tree Grove. I noted on site that the visibility splay would be obstructed by both the proposed “Visirail” and the topography of the site. These factors were not made explicit in the consultation response from ESCC or the Committee Report. Whilst these are clearly evident from a site visit the advice from ESCC makes no mention of visibility through the Visirail and refers only to the removal of vegetation, not rock. The Council’s highways proof refers to topography but does not expand on this point at any length. It is also not clear from the Council’s written case that they considered the Rocks Road visibility splay was not capable of being implemented. This matter was brought out at the Inquiry through evidence in chief and cross-examination. It is therefore possible that in making and advancing the appeal the appellants formed the view that achieving an adequate visibility splay was a resolvable issue and so was not one of the matters on which the appeal turned.
8. In relation to the access at the A22. It is the case that at the point of refusal it isn’t clear how far the Council were relying on comments from October 2022 or March 2023, which it is understood were available to the appellant on the day of planning committee. However, both sets of comments conclude that the application is deficient in relation to both the Fir Tree Grove and A22 access points and so I do not consider that this supports the appellants’ case. The appellants sought to respond to the Council’s concerns through the production of an RSA in July 2023 after the application was refused. As I stated in my decision, the Council are not bound by the findings of the RSA and in the event I agree with the Council’s conclusions in relation to the safety of the A22 access. However, the decision whether to apply the guidance in the DMRB¹ was a judgement based on the material factors in this case and so I do not think the appellants were entirely unreasonable in arguing that the distance to the layby was safe and suitable in this case.
9. In relation to Ancient Woodland, part of the appellants’ case was that guidance in Standing Advice should be disapplied because it was “irrational”. Whilst this is a brave stance to take, it is, in the event, a professional opinion and the PPG and Standing Advice issued by the Forestry Commission is not policy. Furthermore, the advice of Natural England in their consultation responses to employ a boardwalk may have to some extent provided the appellant with the erroneous impression that Ancient Woodland within the SANG could be brought into use without harm, and that this approach could similarly be employed in Fir Tree Grove. Whilst it is clear to me from the evidence before me that very real harm would occur, in light of the advice from Natural England it was not entirely unreasonable for the Appellants to reach a view that they may have had some chance of success at appeal.
10. All of the above leads me to the view that although there are very clear and unambiguous reasons to dismiss the appeal, the Appellants clearly substantiated their case at the Inquiry and did not act unreasonably in bringing the appeal. For these reasons I do not consider that unreasonable behaviour

¹ Design Manual for Roads and Bridges

resulting in unnecessary or wasted expense has been demonstrated and the application for costs is refused.

Costs application 2

The submissions for Gleeson Land and John Alison Land and Research Ltd

- The Council failed to adequately substantiate its reasons for the costs application, duplicating issues raised at the “Bird In Eye” appeal and so acted unreasonably.

The response by Wealden District Council and East Sussex County Council (ESCC)

- The issues involved in this case are fact-specific and therefore the Appellants’ reliance upon another appeal decision is misplaced.
- the Appellant’s costs response does not deny that as a matter of fact its 59m visibility splay at Fir Tree Grove is blocked by rocks and trees. This being the case, the costs application is reasonable.
- The Appellants have not demonstrated that they have incurred additional costs as a result of responding to the Council’s costs application.

Reasons

11. The cost application asserts that the Council’s application for costs was not adequately substantiated and that unnecessary and wasted expense has arisen in responding to it.
12. The issues put to me by the Council clearly relate to the appeal before me. Whilst similar issues may also have been at play at “Bird in Eye” that appears to me to be largely irrelevant as to whether the Council’s stance was relevant in this case. Although, in the event, for the reasons set out above, I have decided not to award costs to the Council, the application for costs was clearly set out and substantiated. I therefore do not consider the application made by the Council to be unreasonable.
13. For these reasons I do not consider that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and the counter application for costs is refused.

Anne Jordan

INSPECTOR