



Costs Decision

Hearing held on 27 and 28 September 2023

Site visit made on 27 September 2023

by M Madge Dip TP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29/02/2024

Costs application in relation to Appeal B Ref: APP/Z3825/W/22/3311819 Pear Tree Farm Furners Lane, Woodmancote BN5 9HX

- 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 Sam and Charlie Tingey for a partial award of costs against Horsham District Council.
 - The appeal was against the refusal of planning permission for the proposed settled gypsy accommodation site comprising 5 pitches and associated utility buildings.
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Decision

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

Case for the applicant

2. A partial award of costs is made in respect of reasons for refusal 1 and 2. The applicant contends that the Council acted unreasonably and inconsistently by making vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by objective analysis and contrary to adopted planning policies and national guidance. The Council also failed to undertake a planning balance exercise and failed to act consistently with other similar development proposals that had been determined. This unreasonable behaviour has put the applicant to the unnecessary and wasted expense of having to defend reasons for refusal 1 and 2. The award is made on both a procedural and substantive basis.

Case for the respondent

3. The reasons for refusal were arrived at following full consideration and a detailed examination of the proposal against the context of the nature and character of the surrounding countryside area. This examination is documented in paragraphs 6 to 9 of the Officer's original delegated report. This was a matter of planning judgement for the determining authority.

Reasons

4. 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.
5. In response to the Council's rebuttal, the applicant clarified that the costs award is made on the basis that the Council failed to re-assess its case in relation to reasons for refusal 1 and 2, considering paragraphs 17 and 18 of APP/Z3825/W/20/3253886 (Sussex Topiary). The applicant claims that had the

Council re-assessed its case, then there would have been no need to have their Landscape witness's input nor so much time spent dealing with these matters. They go on to suggest that landscape matters could have been dealt with by way of conditions.

6. The conclusion set out in the officer report¹ (OR) states the Council gave significant weight to the shortfall in gypsy pitch provision. It also confirms the personal circumstances of the future residents are a material consideration. Further paragraphs confirm that, in the Council's opinion, the development is contrary to several relevant policies. Furthermore, there was insufficient information to assess the likely affects of the development on the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar site.
7. I note the Council's conclusion does not specifically attribute weight to the policy conflict or the biodiversity impact. However, the Council's inability to carry out an Appropriate Assessment under the Habitat Regulations would carry great weight against the development. Furthermore, s38(6) of the Planning and Compulsory Purchase Act requires determinations to be made in accordance with the development plan, unless material considerations indicate otherwise. Whether material considerations outweigh the development plan is a matter of judgement for the decisionmaker. While not specifically referred to as a planning balance, the OR's conclusion contains sufficient detail of what factors weighed against or in favour of the proposal.
8. The Design and Access Statement submitted in support of application DC/21/1996 referred to Sussex Topiary and it is not unreasonable to assume the Council had regard to it in their initial determination of the proposal. Paragraph 5.41 of the Council's appeal statement acknowledges the applicant's reliance on Sussex Topiary. Paragraphs 5.68 to 5.73 then go on to provide the Council's assessment of landscape impact. This is a subjective matter upon which the decisionmaker is entitled to exercise their planning judgement.
9. Sussex Topiary involved a similar proposal to that which is the subject of this appeal. That site is not however located within the same landscape setting as the appeal site before me for consideration. While some parallels can be drawn between these two proposals, the Sussex Topiary decision does not prevent the Council exercising its own planning judgement in respect of the effects of this development proposal on the landscape setting within which it would sit.
10. The Council produced evidence to substantiate each of the reasons for refusal and the Council's Landscape Officer provided objective analysis in support of the Council's assertions regarding the development's impact. While I did not agree with the Council's findings, that does not make their reasoning flawed or inadequate.
11. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Madge

INSPECTOR

¹ application reference: DC/21/1796