



Costs Decision

Site visit made on 15 February 2024

by R Lawrence MRTPI, BSc (Hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date: 10 MAY 2024

Costs application in relation to Appeal Ref: APP/M3645/W/23/3328736 Land east of Woodcock Hill, Felbridge RH19 2RD

- 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 and Mrs H and V Mistry and Patel for a full award of costs against Tandridge District Council.
- The appeal was against the refusal of planning permission for the demolition of existing three agricultural buildings together with two other buildings and erection of three dwellings with parking and use of existing access.

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. The applicant alleges that the Council has behaved unreasonably on substantive and procedural grounds. These include that the Council's decision to refuse to grant planning permission was inconsistent with other decisions made by them; and, failing to give sufficient weight to very special circumstances attributed to other similar developments, and case law, the Council prevented development that should have been permitted. It is also contended that issues raised during the determination process were addressed and that the Council were unreasonable in refusing planning permission, and gave vague, inconsistent, and inaccurate assertions in relation to the impact of the proposed development in doing so. It is also argued that the potential for conditions to secure key benefits was not taken into account and the issue of flood risk could have been dealt with by condition.
4. The Council's officer report and the appeal statement, clearly set out in an assessment of the other considerations put forward including the potential for a fallback and the benefits associated with it. Whilst the applicant considers that Council has been inconsistent with other cases and case law, the weight to be attached to the fall-back and other factors in favour of the proposed development is ultimately a matter for the decision maker. That the applicant does not consider the appeal site to be an undeveloped rural field does not alter the fact that it is within the Green Belt, which the government attaches great importance to; and the essential characteristics of Green Belts are their openness and their permanence.

5. I do not agree that the Council made vague, generalised, and inaccurate assertions in respect of public vantages and prominence, potential activity and paraphernalia. Rather, its assessment of the proposed development was consistent with that required to assess its potential effects on the visual and spatial dimensions of Green Belt openness.
6. That the Council consulted the Environment Agency (EA) does not constitute unreasonable behaviour. While the Council did not share the updated EA correspondence, the most recent formal response was included within the officer report. It was because of the absence of a flood risk assessment (FRA) that the EA objected to the proposal. Furthermore, the officer report does not solely rely upon the EA response to support the reason for refusal but has regard to the location of the access road within Flood Zones 2 and 3, and conflict with the relevant development plan policies. Given that a FRA is a necessary requirement to assess the acceptability of the scheme, I do not agree that this could have been appropriately dealt with by a condition, nor that the Council's second reason for refusal was unjustified or unreasonable.
7. It was not unreasonable for the Council to request professional reports to enable assessment of the potential impact on trees and Ancient Woodland (AW). The officer report sets out the reasons why the other considerations, including potential benefits to trees and AW, did not clearly outweigh the harm identified to the Green Belt. It is not clear that either the Council failed to take into account the potential enhancements for AW nor that different decision would have been reached in respect of the Green Belt harm even if it had.
8. I appreciate the applicant's disappointment with the Council's final decision. Any advice given during the application negotiations does not indicate final decision, nor indicate the Council failed to approach its decision making in a positive and creative way. Rather it is clear that the Council was able to substantiate its decision through detailed assessment of the scheme and its potential impacts, and with reference to development plan policies.
9. It will be seen from my appeal decision that, like the Council, I found that the proposal would constitute inappropriate development in the Green Belt and the weight of other considerations, including the fall-back, the contribution of housing, emissions reductions, other developments cited and the benefits, would not clearly outweigh the Green Belt harm identified. I therefore do not consider that the Council prevented or delayed development that should have been permitted or find that it behaved unreasonably in this regard.
10. Having considered the various points put by the applicant, including in relation to disregard alterations to the roof form in reference to amended plans, I do not consider that unreasonable behaviour on the part of the Council has been demonstrated. It follows that there has been no unnecessary or wasted expense during the appeal process.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

R. Lawrence

INSPECTOR