



Costs Decision

Hearing Held on 16 April 2024

Site visit made on 16 April 2024

by H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2024

Costs application in relation to Appeal Ref: APP/C1625/W/23/3334418 Land at Cloverlea Barn, Wickwar Road, Kingswood

- 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 Persimmon Homes for a full award of costs against Stroud District 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 residential development of 54 dwellings with supporting infrastructure and enabling works including: new vehicular access of Wickwar Road (including the demolition of 24 Wickwar Road), public open space, landscaping and drainage infrastructure.
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Decision

1. The application for costs is allowed in full.

The submissions for Persimmon Homes

2. The application for costs was made in writing at the beginning of the hearing, with additions made verbally before the close.

The response by Stroud District Council

3. The response by the Council was made in writing following the hearing.

Reasons

4. The 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.
5. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal and/or in relation to procedural matters in the handling of the appeal. Procedural unreasonableness may occur if the local planning authority fail to co-operate or fail to agree factual matters, whereas substantive unreasonableness may occur when a local authority unreasonably refuse or fail to determine planning applications, or by unreasonably defend an appeal.
6. The appellant seeks an award of costs on the basis that the Council failed to determine the application in accordance with the statutory deadline as extended by a bespoke Planning Performance Agreement (PPA), without explanation. It is alleged that the Council failed to grapple with the Mitigation Hierarchy Review submitted in June 2023 in relation to the appeal proposal, thus failing to consider whether conditions/obligations could have overcome the

- concerns. The remaining allegations include that the Council failed to review its case following submission of the appeal, failed to adopt a reasonable approach to Grampian conditions and were unreasonable for having ignored a request for a meeting in an email dated 18 March to discuss the suggested biodiversity matters ahead of the hearing.
7. The Council indicate that the application for the proposal was submitted ahead of the conclusion of the Local Plan review and that ultimately, whilst it was open to negotiations, the appellant did not put forward a package of mitigation which offered sufficient certainty that the development could proceed without harm.
 8. The Mitigation Hierarchy Review was submitted in June 2023 and the appeal was submitted in December 2023, without the appellant having received any indication of whether or not the Council regarded that the mitigation hierarchy had been appropriately followed.
 9. The statutory Biodiversity Net Gain (BNG) metric came into force in early 2024, although previous versions were able to be used as a starting point for discussions on mitigation packages involving very highly distinctive habitat types.
 10. In a large part, the reason for the appeal is because the Council failed to review, accept and liaise with the appellant on the Mitigation Hierarchy Review. In my view, this necessitated the submission of the appeal. In addition, the Council's lack of engagement added unnecessary time at the hearing and necessitated further time being given to the main parties to agree the wording of a Grampian condition after the close of the hearing.
 11. I am cognisant that the position on the value of high value habitats has been clarified with the statutory metric coming into force and has confirmed the basis on which such units can be traded and that this has been a recent change that the Council has not been obliged to accept. However, given that the Council were not seeking to resist the principle of development, the absence of indication that the appellant had met the expectations of the hierarchical approach should have been provided at an earlier point in time to have paved the way for more meaningful negotiations on the mitigation package. This concession was only made at the hearing in person, with the written evidence still having largely maintained a defensive position.
 12. In view of this, my conclusion is that the Council has behaved unreasonably, for reasons including its failure to determine a planning application based on an issue that was capable of being dealt with by condition and failing to review and clarify its case promptly following the lodging of an appeal.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Stroud District Council shall pay to Persimmon Homes the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The Applicant is now invited to submit to Stroud District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

H Nicholls

INSPECTOR