



Costs Decision

Hearing held on 27 March 2024

Site visit made on 27 March 2024

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Costs application in relation to Appeal Ref: APP/M2270/W/22/3302329 Land north of Grandshore Farm, Grandshore Lane, Frittenden, Cranbrook, Kent, TN17 2BZ

- 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 Shane Peckham for a full award of costs against Tunbridge Wells Borough Council.
 - The appeal was against the refusal of planning permission for the siting of mobile home, touring caravan, utility dayroom and septic tank installation.
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Decision

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

The submissions for Mr Shane Peckham

2. The costs application and final comments were submitted in writing. The applicant considers that following an appeal decision¹ (the neighbouring decision) being issued on 5 February 2024 for a neighbouring site forms a material consideration, which should have enabled the Council to withdraw its objections to the scheme. Consequently, the applicant considers the Council unreasonably defended the appeal by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead; persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable and not determining similar cases in a consistent manner.

The response by Tunbridge Wells Borough Council

3. The response was made in writing. The Council contends that it has not acted unreasonably in respect of its reasons for refusal (RfR) on its decision notice. Additionally, the Council confirm that it did take into account the recent decision at a neighbouring site to the appeal scheme. The Council state that it was them that informed the applicant of this decision, so that they were aware of the outcome of the appeal. The Council are of the view that the circumstances surrounding the decision at the neighbouring site differ from the appeal scheme, which now involves the consideration of an extant permission in the vicinity of the site and the resultant cumulative impact. There was also

¹ APP/M2270/W/23/3332797

an absence of information on biodiversity submitted with the application. In the Statement of Common Ground a clear view was expressed on the information submitted. It also notes that enhancements and a management plan could be secured by condition, but raised concerns surrounding the baseline of the survey due to the extent of the original increased site area and the red line surrounding the site. In addition to the acceptance of other evidence submitted on this matter, a loss in biodiversity was evident. The Council argues that no unreasonable behaviour has occurred.

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. These may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.
5. In refusing the application in respect of both RfR, I consider that the Council was not unreasonable by including them on its decision notice. I acknowledge the neighbouring decision, its content and the date it was issued. However, I accept the Council's reasons for defending its position on both character and appearance and biodiversity. Whilst there are similarities between the appeal scheme and that of the neighbouring decision, there is an element of subjectivity in relation to character and appearance and therefore judgement.
6. With regards to biodiversity, it is not disputed that the application did not benefit from any supporting documentation and the supporting documentation was provided with the appeal. The neighbouring decision was considered by the Council, but it will be seen from my decision that I do not consider the situations to be the same in respect of biodiversity, as there is identified harm in the case of the appeal scheme, and thus represents a main issue. Whilst I have found that the harm from this aspect of the scheme could be overcome by suitably worded conditions, there is no doubt that the submission of further documents² by the appellant aided in reaching this position during discussions at the event. In these circumstances the Council's behaviour to not remove all of its objections before the hearing was not unreasonable.
7. On the basis of the evidence before me, I conclude that unreasonable behaviour has not been demonstrated and that the Council caused no unnecessary or wasted expense in so far as an award of costs could be justified. I therefore determine that the costs application should fail and no award is made.

W Johnson

INSPECTOR

² Ecological Impact Assessment by KB Ecology dated 26 January 2024 KB Ecology
Biodiversity Unit Calculations with 2020 Baseline - Development Area Only by KB Ecology dated 11 March 2024