



Costs Decision

Site visit made on 22 July 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2024

Costs application in relation to Appeal Ref: APP/C1435/W/24/3336886 Bewl Water, The Boat House Bistro, Bewlbridge Lane, Cousley Wood, Wadhurst TN3 8JH

- 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 Bewl Events (Salomons UK Ltd) for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for extensions and alterations to The Boat House Bistro, replacement of the adjacent fishing facility building and change of use to form 6 x 1 bed and 5 x 2 bed tourist units, creation of a café with terrace, with some sailing club facilities retained.
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Decision

1. The application for a full award of costs is refused. A partial award of costs is allowed in the terms set out below.

Reasons

2. 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's costs application alleges procedural and substantive failings. In essence, the Council's Planning Committee North decided on the planning application subject of this appeal contrary to a previous Inspector's decision¹ at the nearby fishing lodge, which specifically considered the matter of impact of the development on the dark skies of the High Weald National Landscape (formerly an Area of Outstanding Natural Beauty; AONB).
4. In that appeal decision, the Inspector considered that the proposed glazing, lighting of balconies and alterations to the building in close proximity to other buildings, car parks and streetlights that already emit some artificial lighting would not have a significant impact on the dark skies of the HWNL subject to imposition of a condition to control external lighting. Furthermore, the applicant considers the decision to refuse planning permission is at odds with the professional assessments of the Council's planning officers, who recommended planning permission should be granted, and statutory and technical consultees who did not object to the proposals.

¹ APP/C1435/W/22/3294192

5. The appellant further contends that the Planning Committee North's debate of the planning application in the lead up to the decision was vague and did not focus specifically on the perceived harm to the AONB and instead focused on concerns regarding biodiversity. The reasons for refusal, which focused the issues of concern to the impact on the HWNL, were finalised after the committee meeting and decision to refuse had taken place.
6. The Council's response is that the proposal was subject to relevant debate regarding impact to the HWNL at the committee meeting. This included debating the motion to refuse, that was accepted, that included specific reference to the application being contrary to Policy EN6 of the Wealden Local Plan 1998 (WLP) and the National Planning Policy Framework (the Framework) in so far as it relates to AONBs / NLs. The Council also contend that the Planning Committee North, as decision maker, were entitled to make their decision based on the information before them contrary to the officer recommendation. Furthermore, the Council contend that the reasons for refusal have been substantiated in the appeal submissions.
7. PPG explains that examples of unreasonable behaviour by local planning authorities includes a failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact that are unsupported by any objective analysis.
8. In this case, I have found the proposal to be unacceptable with regard to the impact on dark skies within the HWNL. The dark skies are a known and significant matter identified in the High Weald Management Plan. From the information before me I found that the application was not supported by any objective analysis of the impact of light spill from the proposal compared with the existing situation. Accordingly, an accurate assessment of the impact of light spill from the development on the dark skies has not been established.
9. The proposal is also clearly much larger than the nearby fishing lodge and whilst a material consideration, it does not establish the acceptability of the proposals at the Boat House Bistro with regard to light spill given the difference in the scale of the two developments.
10. As such, I do not agree that it would be acceptable for the significant issue of light spill within the HWNL to be left to a condition to deal with without further assurance that it would be effective in mitigating impact on the dark skies. In this regard, I find that the Planning Committee North's conclusions in this regard were not unreasonable, and the evidence provided by the Council subsequently for this appeal explains the concerns to a sufficient level of detail.
11. Likewise, the conclusions reached about the built form of the development, whilst subjective, is well within the gift of a planning committee to reach a contrary view to a planning officer. Whilst, I have found no harm to the HWNL arising from the proposed physical changes to the building it was not unreasonable for the Council's Planning Committee North to have reached the view they did when considering the great weight that must be applied to protecting the character and appearance of National Landscapes (NL).
12. However, I am not satisfied that the conclusions reached with regard to the tranquillity of the HWNL from disturbance and noise has been adequately substantiated based on the information before me. I understand the reference to disturbance in the Reason for Refusal (RfR) is related to noise impacts

emanating from an intensification of the use of the building. The existing building is not located close to residential properties nor has any evidence been presented that demonstrates noise and disturbance is an existing issue at the part of the reservoir where the appeal site is located. The building also has unrestricted use and can be used for parties and functions throughout the year, which would inevitably result in some noise being generated when used in this way. In contrast, the proposal to convert the building to holiday lets is relatively modest in terms of actual occupancy given the 11 rooms proposed are either 1 beds or 2 beds. The design of the proposal was also amended during the application to include noise attenuation measures.

13. Significantly, however, is that the applicant agreed to accept a condition requiring a Noise Management Plan, similar to one already being used successfully on the nearby camping site and one attached to the Fishing Lodge planning permission. A noise management plan would be an enhancement from the existing situation. The measures designed to control noise and disturbance were clearly articulated in the planning officer's committee report. Overall, it is not clear to me on what rational basis the Planning Committee rejected the advice before them in terms of how any noise and disturbance would be controlled. I find, therefore, that this part of the reason for refusal was unreasonable albeit noting that its omission would not have resulted in planning permission being granted. Nonetheless, the applicant has had to incur costs in addressing this issue in their appeal submissions.

Conclusion

14. For the aforementioned reasons, I find that unreasonable behaviour by the Council resulting in unnecessary expense in the appeal process, as described in the PPG, has been demonstrated with regard to disturbance. The unreasonable behaviour would not have resulted in planning permission being granted or averted the appeal. As a result, a full award of costs is not justified but a partial award of costs is.

Costs Order

15. 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 Wealden District Council shall pay to Bewl Events (Salomons UK Ltd), the costs of the appeal proceedings described in the heading of this decision but limited to those costs incurred in responding to disturbance in the RfR in the Council's decision notice only, as outlined above, including the expense of making the costs application in this respect.
16. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

N Perrins

INSPECTOR