



Costs Decision

Site visit made on 30 July 2024

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2024

**Costs application in relation to Appeal Ref: APP/E2205/W/24/3345453
Chilmington Green, Land to west of Chilmington Green Road, Ashford,
Kent, TN23 3DL**

- The appeal 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 appeal is made by Hodson Developments Limited against the decision of Ashford Borough Council.
 - The appeal was against the refusal of planning permission for construction of a Wastewater Treatment Plant, associated landscaping, and proposed vehicular access.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 appellant's application for an award of costs relies to a substantial extent on the fact that the Planning Committee failed to accept the views of its professional officers to grant permission, and the view that the Council subsequently failed to substantiate the reasons for refusal by objective analysis at appeal. Furthermore, it is contended that the Council failed to determine like applications in a consistent manner. As a result, the appellant contends that the Council acted unreasonably and that unnecessary or wasted expense was incurred as a result. Planning Committee Members are not bound to accept the recommendations of their officers. Nevertheless, reasons for refusal should be substantiated and based on relevant evidence. The Council refused the proposal with three reasons for refusal which I will deal with in turn below.
4. The first reason for refusal related to the effects of the proposal on the character and appearance of the area. I have found that there would be some harm to the character of the area, but that this would be outweighed by the benefits of the scheme. This is a matter of planning judgement, based on my assessment of the particular impacts and merits of the proposal. The Council set out clearly in their appeal submissions where members considered this harm would arise and in the event I agree to some limited extent, with their conclusions. In this regard, I do not consider that the Council acted unreasonably in finding harm in relation to the visual impacts of the scheme.
5. The second reason for refusal related to the effects of the proposal in relation to ground and surface water pollution, in particular the River Beult. The Council's concerns focussed on whether discharge to the Beult would be

granted a Discharge Permit and whether the development would be operated in accordance with it. It is a well-established principle that planning should not seek to duplicate other environmental legislation or statutory functions. The scheme could not operate lawfully outside the restrictions imposed by a Discharge Licence and the Environment Agency, as regulator, are the most appropriate body to determine whether such a licence be granted. It is therefore unreasonable for the Council to withhold permission for reasons which fall outside their jurisdiction. The planning committee were advised of this matter in the committee report and chose to refuse the scheme against clear advice to the contrary. No convincing evidence was supplied at appeal to justify their position. This was unreasonable behavior.

6. The third reason for refusal related to the effects of the proposal on local businesses and on existing and future residents. The Council's own Environmental Health Officer was satisfied that the scheme would be acceptable in this regard. Evidence produced for the appeal was provided only in part, the whole report not being made available to the Inspectorate as part of the Council's submissions. I have reached a view that in the absence of the conclusions of the report I cannot rely on the excerpts put to me as being representative of the report's full findings. Whilst I am conscious that the potential distance between the development and future housing was incorrect within the committee report, I nonetheless consider the concerns raised to be overstated and in any event, capable of being remedied by the use of appropriate planning conditions. The failure to consider conditions, and to not adequately substantiate their reason for refusal with adequate evidence, leads me to the view that on the third reason, the Council also acted unreasonably.
7. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of reasons 2 and 3 of the decision and a partial award of costs is therefore warranted.

Costs Order

8. 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 Ashford Borough Council shall pay to Hodson Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to reasons for refusal 2 and 3; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Ashford Borough 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.

Anne Jordan

INSPECTOR