



Costs Decision

Site visit made on 17 September 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2024

Costs application in relation to Appeal Ref: APP/Z3825/W/24/3342051 Land east of Coolham Road, Coolham, West Sussex RH13 8QD

- 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 Harriet and Victoria Martin-Bird for a full award of costs against Horsham District Council.
 - The appeal was against the refusal of planning permission for demolition of an agricultural building and the erection of two dwellings.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('the 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. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples given in the PPG of behaviour that may give rise to a substantive award against a local planning authority include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and 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.
4. The Council's first reason for refusal of the planning application concerned effects on the Arun Valley Special Area of Conservation ('SAC'), Special Protection Area ('SPA') and Ramsar site in respect of increased water abstraction. The SAC and SPA are European Sites designated under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') which impose a duty on the competent authority to consider implications for the conservation objectives of the sites within the framework of an Appropriate Assessment. The National Planning Policy Framework indicates that equivalent protection should be given to Ramsar sites.
5. The planning application submission included information seeking to demonstrate that the proposal would achieve 'water neutrality' such that there would be no adverse effect on the integrity of designated sites. However, the evidence before me indicates that new information came to light during the course of the application suggesting that water was not being supplied from the source referenced in the water neutrality assessment. The applicants advise

that information on the new source of water supply was provided to the Council including contact details for verification purposes and that a statutory declaration was offered but was not accepted. However, there is no statutory requirement for the Council to accept new evidence or to seek verification itself, and I am not persuaded that a failure to do so would amount to evidence of unreasonable behaviour.

6. The applicants also argue that the Council did not follow advice on its own website about whether a fallback position may be relied on when calculating baseline water consumption rates with reference to prior approval which has previously been given for two dwellings on the appeal site ('the Prior Approval').
7. I note that relevant conditions on the Prior Approval had been discharged, the applicants had secured approval under regulation 77 of the Habitats Regulations, and had set out their intention to implement the prior approval scheme should the appeal proposal be refused. However, the guidance on the Council's website is just that and does not comprise a statement of policy. Moreover, while the guidance indicates that a fallback consent is capable of being considered as part of the evidence base for existing water consumption on a site and that evidence to demonstrate a fallback would be implemented would be required, it does not confirm provision of such evidence would inevitably mean a fallback would be taken into account.
8. Instead, the relevance of and weight to be given to a potential fallback is a matter of planning judgement. Furthermore, a precautionary approach is to be applied when exercising the duty under the Habitats Regulations.
9. In this case, the Prior Approval scheme approval under regulation 77 of the Habitats Regulations was on the basis of water neutrality information referring to baseline water demand on the site being met by supply from a source that was not current at the time of the appeal application. In view of the change in circumstances from the Prior Approval and the limited information on the new water supply source provided at the time of the application and adopting the precautionary approach which confers a requirement for greater certainty, I do not consider it was necessarily unreasonable for the Council not to take into account the fallback position in the specific circumstances of this case.
10. The Council's second reason for refusal of the planning application concerned effects on the character and appearance of the site and surrounding area. I note that the Council's landscape architect and conservation officers did not object to the proposal. However, the conservation officer's comments related to effects on the historic Coolham Airfield site. Given that effects on the Airfield or other heritage assets were not part of the Council's reason for refusal, there would seem to me to be no departure from the position of this consultee.
11. The same cannot be said for the position of the landscape architect. However, effects on landscape, character and appearance are matters of planning judgement and while proposals should be assessed with regard to relevant material considerations which may include comments by consultees, these comments are not binding and there is no requirement on a decision-maker to agree with them. The Council's officer report does not explicitly refer to the disagreement with the landscape architect's view, but it nevertheless clearly explains the reasons why the development was considered to be unacceptable with reference to relevant policies of the development plan. I consider the

Council has adequately substantiated its position and the reason for refusal, and in my view it has not behaved unreasonably in reaching a different conclusion to the landscape architect. Indeed, I have also found in my appeal decision that the proposal would cause harm to the character and appearance of the area.

12. The applicants advise that the case officer did not raise concerns about design during the determination period and that the second reason for refusal was therefore somewhat of a surprise. However, even if I were to find that a failure to communicate concerns earlier in the process did amount to unreasonable behaviour by the Council, such behaviour must also have resulted in unnecessary or wasted expense in the appeal process for an award of costs to succeed. Given my view above that the Council's reason for refusal was well-founded, I am not persuaded that the applicant has been put to unnecessary or wasted expense such that this would be the case here.
13. The Council did not provide an appeal statement, choosing instead to rely on its officer report. A response to the applicants' evidence, particularly in relation to water neutrality where further information had been provided with the appeal may have been helpful, but there is no requirement on a Council to submit an appeal statement and the fact that none was submitted does not in my view amount to unreasonable behaviour.

Conclusion

14. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR