



Costs Decisions

Hearing held on 22 October 2024

Site visit made on 22 October 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Costs applications in relation to Appeal Ref: APP/V3120/W/24/3346046 Land To The West Of Great Western Park (Valley Park), Didcot, Oxfordshire

- The applications are 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 applications are made by Mr Daniel Milward (Persimmon Homes (Wessex)) for a full award of costs against Vale of White Horse District Council and the Environment Agency (the EA).
 - The appeal was against the refusal to approved details pursuant to condition No 28 of planning permission Ref P14/V2873/O (the parent permission).
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Decisions

1. The applications for an award of costs are refused.

Procedural Matters

2. The applications were made in writing prior to the commencement of the hearing. Both applications are the same. The Council's and the EA's responses to the applications were also provided in writing. The applicant did not add to the applications verbally at the hearing. I agreed to the submission of final comments in writing from the applicant after the close of the hearing. These final comments added points to the applications and so I allowed the Council and the EA to respond to these additional contentions. The appellant was provided with an opportunity to make final comments in response. I have taken all the representations into account in reaching my decisions.

Reasons

3. 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 applications claim unreasonable behaviour by the Council and the EA in terms of (i) failing to understand the meaning of condition number 28 attached to the parent permission, (ii) failing to substantiate the reasons for refusal or making vague or generalised assertions, (iii) failing to consider the merits of the application and whether the proposed culverts would cause harm to biodiversity, (iv) failing to produce evidence to dispute the benefits of the proposed enhancement and mitigation works (v) refusing approval as the applicant had not considered alternatives when this is irrelevant, (vi) maintaining their position and not reviewing their cases despite the Council accepting that culverts are not precluded, and (vii) delaying development that clearly should have been permitted.

4. Condition number 28 of the parent permission requires the submission and approval of a scheme detailing the number, location and design of crossings over retained watercourses. It also requires crossings to be designed to protect the watercourse habitats and the wildlife corridor they provide. The Council's refusal reason is explicit in setting out the concern that the crossings as proposed would fail to protect the watercourse habitats and wildlife corridors. These objections are simple in form but nonetheless they demonstrate a sound understanding of the terms and meaning of condition number 28.
5. The Council and the EA through their appeal submissions have explained further their concerns over the effects of the proposed crossings on the watercourse as well as its associated wildlife. It is not clear whether the parties' contentions are supported by evidence from a qualified ecologist. However, the objections refer to relevant development plan policies and respond to points made by the applicant in their submissions. Also, it is fair for the Council and the EA to refer to general advice setting out the potential impacts of culverts in explaining their concerns with the particular details of the submitted scheme. Despite the claims to the contrary, I find the Council and the EA have adequately substantiated the refusal reasons and so there has been no failure in these regards. Also, the objections are not so vague or inaccurate so as to be unreasonable or confusing.
6. The Council did not produce an officer's report to support its decision to refuse approval prior to the issuing of its decision. However, the refusal reason itself explains the Council's view that the culverts would cause harm. Moreover, it is evident through the statement of common ground that the Council accepts the appellant's submissions on the condition of the affected watercourse and the benefits of the proposed enhancement and mitigation measures. Therefore, the submissions indicate the Council has taken these factors into account in reaching its decision. However, the Council is concerned over whether the measures could be secured through approving details pursuant to condition number 28. Given this context, it is understandable that the Council and the EA do not dispute the benefits of the enhancement works. As such, there has been no unreasonable behaviour in these regards.
7. The Council's refusal reasons do not include a concern over the lack of consideration of alternatives. However, it is clear from the appeal submissions that the Council and the EA are of a view that crossings of alternative design would avoid harm to the watercourse. It is reasonable to have regard to potential alternative schemes that would avoid detrimental effects, particularly in light of the mitigation hierarchy as set out under Core Policy 46 of the Vale of White Horse District Council Local Plan Part 1 adopted 2016 as well as the National Planning Policy Framework and the PPG.
8. My appeal decision explains why I consider the watercourse is not a priority habitat. The Council's and the EA's contentions on this matter are clearly set out in the submissions and they were explained further at the hearing. The appellant had the opportunity to respond to the Council's and EA's submissions. While I do not agree, the case made by the Council and the EA is not unreasonable as the issue as to whether the watercourse is a priority habitat is a matter of planning judgment. The claim made by the EA that the watercourse is a chalk stream was dealt with quickly at the hearing. Even if I found this to be an inaccurate assertion, I fail to see how it has resulted in any unnecessary costs to the applicant.

9. The Council accepts that Development Policy 30 of the Vale of White Horse District Council Local Plan Part 2 adopted 2019 does not preclude culverts. Even so, it is fair for the Council to contend the policy includes a presumption against culverting watercourses given its wording and as it accords with advice in the PPG. In any event, it is evident that the Council and the EA still have concerns with the proposed crossings even when acknowledging the full wording of Development Policy 30. As such, there is no compelling reason why the Council and EA should have reviewed their positions and withdrew their concerns.
10. My appeal decision sets out the reasons why the details of the scheme would not accord with development plan policies. Consequently, it follows that the Council has not delayed development that clearly should have been permitted. For all of these reasons, I find no unreasonable behaviour by the Council or the EA that has led to the applicant incurring unnecessary or wasted expense in the appeal process. Therefore, I conclude no award of costs is justified.

Jonathan Edwards

INSPECTOR