



Costs Decision

Site visit made on 18 September 2024

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2024

**Costs application in relation to Appeal Ref: APP/W1850/W/24/3342292
Homelands, C1059 from Bradleys Corner to C1061, Hampton Charles,
Herefordshire WR15 8PZ**

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 Stuart Yarnold for a full award of costs against Herefordshire Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of barn and erection of a new 3-bed dwelling.
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Decision

1. The application for a full award of costs is allowed, in accordance with the terms set out below.

Reasons

2. 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.
3. From the evidence provided, including various correspondence between the Council and appellants' agent, the planning application was with the Council for some time during the application process, from its validation in January 2023. Despite the long timescales involved, the evidence also shows that the Council provided the appellants with the opportunity to submit further information, in order to seek to address the concerns raised about the impact on the River Wye Special Area of Conservation (SAC).
4. The evidence demonstrates that the appellants agreed to various extensions of time to determine the application and that it submitted revised and additional information for consideration by the Council during the application process, which subsequently, the Council needed to undertake consultations in respect of. These matters would have added to the time needed to process the application, although based on the evidence before me, lack of cooperation from the Council is not demonstrated in respect of such.
5. I appreciate from the evidence before me that the Council's Ecology officer commented on the submitted revised version of the drainage and nutrient strategy report prepared by Corner Water Consulting, version 3 dated, 8 August 2023 on the 5 September 2023. In their reply, the Council ecologist set out that, *"A detailed Orchard Nutrient Neutrality scheme and management plan should be submitted and legally secured as a relevant 'charge' on the land*

involved and this can then be used to demonstrate nutrient neutrality for the required HRA process. This could be section 106 or suitable unilateral undertaking – advice for the council’s relevant officers should be sought on securing this legal agreement”.

6. Based on the evidence provided, while it is not clear whether or not the appellants had sight of the ecologist comments, correspondence between the Council and the appellants’ agent demonstrates that the appellants were made aware of the need for a legal agreement to be drafted on the 2 November 2023. Also, in the same correspondence, the agent was advised to seek a shadow HRA (Habitats Regulations Assessment) from Natural England and recommended to provide further drainage reports. The draft Unilateral Undertaking (UU) was subsequently submitted to the Council on the 4 January 2024.
7. From the evidence provided, the Council did not always respond to the appellants agent in a timely manner and so, this caused some delay in the application process. However, there were genuine concerns about the appeal proposal, which based on the evidence before me, were not demonstrated to be vague, generalised nor inaccurate. The advice of the Council’s ecologist was clear and unequivocal. The Council sought solutions to concerns that had been raised about the integrity of the SAC, which it had a legislative duty to do. The subsequent Appropriate Assessment undertaken during the appeal process, sets out that there would be harm caused to the integrity of the European site. Furthermore, without the additional information that needed to be completed and submitted by the appellants, a full Habitats Regulation Assessment could not have been completed in respect of the proposed mitigation measures required.
8. Therefore, the Council did not act unreasonably in requesting further information to address concerns related to the European Site, as they had a statutory duty to undertake an Appropriate Assessment as the Competent Authority under the Conservation of Species and Habitats Regulation 2017 (as amended), (the Habitats Regulations).
9. In regard to processing a planning application, part 35 (2) of the Town and Country Planning (Development Management Procedure)(England) Order 2015, sets out that a local planning authority needs to demonstrate that they have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application. I consider that although there were some delays caused by the Council officers in responding to matters, the Council has demonstrated that it did seek to work positively and proactively with the appellants in relation to the application in respect of SAC mitigation.
10. Notwithstanding the above, having regard to my appeal finding that, had an appropriate Unilateral Undertaking been in place to secure the required mitigation in respect of the European Site, the development would be acceptable in planning terms. Despite that a UU only needs to be entered into unilaterally by the appellant/landowner, without the local planning authority, the Council did not provide comments on the submitted draft UU. This resulted in the UU not being appropriately progressed and completed and, the subsequent submission of the appeal against non-determination. Therefore,

this lack of guidance from the Council about the UU resulted in the appellants incurring undue costs in submitting the appeal.

11. In respect of the fallback position, I have no substantive evidence to suggest the Council did not understand the implications of such. Furthermore, in its statement of case, the Council has set out that it appreciates the established Class Q scheme and it affords significant weight to the fallback position. Therefore, I do not find any unreasonable behaviour on behalf of the Council in regard to such matter.
12. In view of the above, I conclude that unreasonable behaviour on behalf of the Council is demonstrated, due to the timeliness of the Council considering the draft UU and subsequent need for the appeal. Therefore, the appellant has, incurred wasted and unnecessary expense in preparing the appeal. Accordingly, I find an award of costs is justified in such regard.

Costs Order

13. In the 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 Herefordshire Council shall pay Mr Stuart Yarnold, the costs of appeal proceedings described in the heading of this decision. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Herefordshire Council, whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Billings

INSPECTOR