



Costs Decision

Hearing held on 7 August 2024

Site visit made on 7 August 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Costs application in relation to Appeal Ref: APP/C1435/W/24/3341984 Land at Erleigh, West Street, Mayfield, East Sussex, TN20 6DR

- 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 and Mrs R Harvey for a partial award of costs against Wealden District Council.
- The appeal was against the refusal of planning permission for erection of 4.No dwellings, upgrading of existing vehicular access, landscaping and other associated infrastructure.

Decision

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

The Submissions for Mr and Mrs R Harvey

2. The costs application was submitted in writing after the hearing at my request. It has been made on the substantive grounds that the Council's position with respect to heritage matters has been inconsistent without adequate reasoning and that the Council's assessment of the heritage harm is unsubstantiated.

The Response by Wealden District Council

3. The response was submitted in writing and the Council refutes the appellants' claims.

Reasons

4. 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.
5. This proposal was the third involving this site and proposing residential development. Pre-application advice¹ was sought on significantly larger proposals and a scheme of similar size to the first application². The advice³ of the Senior Heritage Officer to the first application did refer to the potential for a smaller area for development to be considered. This was made on a 'without prejudice' basis. It is not clear why this comment was provided as part of the consultation response to a different scheme, but nonetheless, this could not

¹ Appellant Statement: Appendix B

² WD/2020/2131/MAJ

³ Council Statement: Appendix 14/ Appellant Statement: Appendix F

give rise to any reasonable expectation on the part of the applicant as to the acceptability of any subsequent applications.

6. The second application⁴ was for four dwellings. The comments of the Senior Heritage Officer⁵ are clearly framed as a formal consultation response to what was at that point, a valid planning application. The further correspondence⁶ between the Council and the agent indicated some concerns on the part of the Council with respect to the scheme but did not identify any concerns in relation to the effect of the proposal on any heritage assets or that the concerns were in any way derived from a heritage consideration.
7. The third application (the subject of this appeal) was also for four dwellings and submitted following resolution of a land ownership issue which led to the second application being withdrawn. The response of the Senior Heritage Officer⁷ to this was to object to the proposal. There is no substantive evidence before me as to why they now reached a different conclusion. The correspondence⁸ following the meeting of 10 August 2023 sets out that there was an explanation given but contains no detail as to why the response was changed.
8. It is long established that consistency is important to engender confidence in the development management system. While it is accepted that different decision makers can legitimately reach different conclusions, the reasoning for this should be explained. The second application was, at the time of the consultation and response, an active planning application. The fact it was not determined does not abrogate the Council of its responsibilities to be consistent in its approach. I therefore consider that, in raising a heritage objection to the appeal proposal with no explanation as to why this differed from the response to the previous application, the Council has behaved unreasonably.
9. However, this has not put the appellants to any additional or wasted expense during the appeal process. An updated Heritage Impact Assessment dated September 2023 was submitted to the Council. The Council's assessment of the proposal did not alter beyond that point, and it refused the application on the basis of the advice that was available to the appellants. It was this case that the Council continued to advance at the appeal and which it was necessary for the appellants to address. This therefore does not amount to a wasted expense during the appeal process.
10. The appellants contend that the Council's assessment of the heritage harm is unfounded. The Senior Heritage Officer's comments fully express their views on the proposed development. They are largely carried forward into the Council's Officer Report. There is not a prescribed approach to assessing less than substantial harm, however it is necessary for there to be an adequate explanation of the conclusion reached. When considered in isolation of the inconsistency with the previous comments, I consider the response represents a reasonable exercise of planning judgement which has been adequately justified.

⁴ WD/2021/2754/F

⁵ Appellant Statement: Appendix H

⁶ Appellant Statement: Appendix G/ Council Statement Appendix 27

⁷ Council Statement Appendix 12

⁸ Appellant Statement: Appendix L

Conclusion

11. While I find that the Council has demonstrated unreasonable behaviour, it has not resulted in unnecessary or wasted expense. An award of costs is therefore not warranted.

Jennifer Wallace

INSPECTOR