



Costs Decision

Site visit made on 16 December 2024

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2025

Costs application in relation to Appeal Ref: APP/J2210/W/23/3335774 Butlers Court Farm, Blean Common, Blean CT2 9JJ.

- 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 Paul Abbott for Pineglade Developments Ltd for a partial award of costs against Canterbury City Council.
- The appeal was against the refusal of planning permission for 6 detached dwellings consisting of 3 no. one and a half storey, 2 no. two and a half storey and 1 no. 2 storey dwelling together with formation of access and associated hardstanding following demolition of existing industrial buildings.

Decision

1. The application for a partial award of costs is allowed in 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. Costs awards may be procedural, relating to the appeal process, or substantive, relating to planning merits. The PPG outlines behaviour which may give rise to a substantive costs award against a local planning authority. This includes failure to produce evidence to substantiate each reason for refusal on appeal, and vague, generalised or inaccurate assertions about a proposal's impact, unsupported by any objective analysis.
3. The applicant considers that the Council has behaved unreasonably and caused unnecessary or wasted expense in the appeal process in relation to its second reason for refusal. This relates to the Stodmarsh Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site, with regard to nutrient neutrality. As the proposed development comprises new residential development, it would introduce the risk of additional nutrient load from the increase in wastewater flows or surface water runoff if the site falls within the relevant catchment and the effect is not mitigated adequately.
4. At application stage, the applicant submitted a Flood Risk Assessment and Drainage Strategy (FRADS) (MT/5667/FRADS.4, February 2023). At FRADS paragraphs 3.7 - 3.9, it confirmed that a package treatment plant would be installed for foul water and that the site is located outside the Stodmarsh Nutrient Impact Area and outside the River Stour catchment area. The applicant's Planning Statement reiterates this.

5. At appeal, the applicant submitted a Technical Note dated 27 October 2023 by Water Environment Limited. This confirms in writing and mapping (Figure 1) that the site lies outside the Lower Stour, Upper Stour and Little Stour and Wingham Operational Catchments and outside the Sarre Penn and River Wantsum River Water Body Catchment. I have found in my appeal decision that the site would fall outside the hydrological catchments affecting the Stodmarsh SAC, SPA and Ramsar site, in respect of surface water run-off.
6. With regard to wastewater, if the site were to connect to the Canterbury Wastewater Treatment Works (CWTW), the CWTW does fall within the catchment for the Stodmarsh SAC, SPA and Ramsar site. However, in seeking to mitigate any likely significant effect, the FRADS confirms that the proposed development would not connect to mains sewerage and therefore the CWTW, but would instead have its own package treatment plant which would discharge outside the Stodmarsh SAC, SPA and Ramsar site catchment. My appeal decision finds that the proposed development would not have an adverse effect on the Stodmarsh SPA, SAC and Ramsar site in respect of wastewater.
7. Notwithstanding the FRADS, the Council's officer report asserts that the proposed development would lead to additional overnight accommodation in the Stour catchment and therefore finds that without mitigation, there would be a potential significant effect on the Stodmarsh SPA, SAC and Ramsar site.
8. The Council's statement of case (June 2024) refers to the FRADS only in passing and fails to refer to the Technical Note. It confirms that Southern Water contends that the site falls outside the catchment area affecting the Stodmarsh SPA, SAC and Ramsar site. The Council's statement of case does not expand on its claim that insufficient information has been provided.
9. The Council's email exchange with Southern Water consists of the case officer asking on 29 May 2024 whether Butlers Court Farm, Blean Common, Canterbury, Kent CT2 9HE falls within the Stodmarsh catchment. On 4 June 2024, Southern Water responds that the closest catchment to the address is Canterbury which is affected by the Stodmarsh constraint.
10. No mapping is included in either email. No plans or documents were sent to Southern Water. The postcode relates to Chapel Lane, Blean. Chapel Lane is south and east of the site, is served by the CWTW, and is within the Stodmarsh catchment. The CWTW catchment is shown in Appendix 2 to the applicant's costs application, which provides mapping from the Council's website. Again, it shows that the site is outside the current CWTW sewerage network and is outside the Stodmarsh catchment.
11. The Council's costs response asserts that the Council did consider the FRADS, but that the Council has not received the Technical Note and that it has not been demonstrated with sufficient scientific certainty where the outflow from the package treatment plant would drain and if it would lead to increased nutrients into the River Stour catchment.
12. However, I have sympathy for the applicant's concerns that the FRADS and the Technical Note were not carefully considered by the Council. Indeed, while the Council claims it has not received the Technical Note, the Technical Note was sent to both a generic Council planning email address and the Council's case officer's email address on 20 December 2023.

13. After the exchange of costs documents in July 2024, I issued an email dated 27 November 2024 to the Council regarding a drainage condition. In their 3 December 2024 response, the Council confirmed that since appeal validation, the site has been taken out of the Stodmarsh constraint. On 4 December 2024, I sought clarity as to whether the Council was defending their second reason for refusal and to ask for the date that the site was taken out of the Stodmarsh constraint, with any relevant mapping indicating the change in circumstances. On 6 December 2024, the Council confirmed that Natural England advised on 16 July 2024 that updated maps should be used. This did not clarify if the site had ever fallen within the constraint area. Despite asking for further clarity by 12 December 2024, the Council responded on 17 December 2024 to confirm only that the second reason for refusal was no longer being defended. This obfuscation was unhelpful.
14. The Council should not have relied on the email exchange with Southern Water. Scant account was afforded by the Council to the applicant's FRADS at application and appeal stages and the Technical Note at appeal stage. The Council has failed to address the matter of nutrient neutrality appropriately at either application or appeal stage. As a result, the Council's reason for refusal was not adequately substantiated. This was unreasonable and resulted in unnecessary or wasted expense in the appeal process for the applicant.
15. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of work undertaken by the applicant in respect of the second reason for refusal throughout the appeal process. A partial award of costs is therefore warranted in respect of the applicant's work after the Council's decision and throughout the appeal process for the second reason for refusal only.

Costs Order

16. 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 Canterbury City Council shall pay to Mr Paul Abbott for Pineglade Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to work undertaken by the applicant after the Council's decision and throughout the appeal process for the second reason for refusal only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Canterbury City 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.

Joanna Gilbert

INSPECTOR