



Costs Decision

Site visit made on 24 September 2024

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 February 2025

Costs application in relation to Appeal Ref: APP/L3815/W/23/3330753 Birdham Straight House, Main Road, Birdham, West Sussex PO20 7HS

- 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 Andrew White (Boughtonwood Homes Limited) for a partial award of costs against Chichester District Council.
 - The appeal was against the refusal of planning permission for the removal of single storey sunroom to existing house and construction of five new two storey houses, together with garages, parking, and revised access arrangements.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking a partial award of costs on substantive grounds.
4. The Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include failure to produce evidence to substantiate each reason for refusal on appeal, and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The applicant's costs application specifically relates to the Council's fourth and fifth reasons for refusal. These relate to: i) the impact upon the highway network, having regard to whether a contribution towards A27 highway improvement works is required; and, ii) whether mitigation is required in respect of any impacts arising from nitrates associated with surface water drainage upon the Chichester and Langstone Harbours Special Protection Area (SPA).
6. The applicant considers that the Council acted unreasonably by including these reasons for refusal and that this has resulted in the applicant incurring unnecessary appeal costs in responding to them.

7. I do not find that the Council acted unreasonably by including refusal reason 4, which seeks a highways contribution from the appeal scheme. In coming to this conclusion, I have noted the demonstrative evidence which has been referred to by the Council, that the Strategic Road Network (SRN) is at capacity, and that further highways improvements will be required to mitigate the impact of new residential development, including junction improvements on the A27 Chichester Bypass.
8. This evidence includes transport studies that form part of the Council's evidence base for the emerging Local Plan, as well as the economic conditions that have occurred since the adoption of the current Local Plan and the 2016 *Planning Obligations and Affordable Housing Supplementary Planning Document* (the 2016 SPD), whereby a significant increase in the costs of the required A27 highway works has meant that the mitigation of highway impacts from the notable delivery of housing in the southern part of the District has not been delivered.
9. The Council initially put forward evidence to defend this refusal reason based on emerging Local Plan draft Policy T1 which sets out an updated tariff for highways contributions. Reference was also made to a recent appeal which the Council considered at that time to support this approach.
10. Subsequently, during the course of this appeal, the Council consulted upon, and then adopted, the *Chichester Local Plan 2014-2029 - A27 Chichester Bypass Mitigation Supplementary Planning Document* (October 2024) (the 2024 SPD).
11. My appeal Decision explains why I have found the Council's requested financial contribution in accordance with the 2024 SPD, which is intended to be an interim document pending the adoption of the emerging Local Plan, to be applicable in the case of the appeal scheme at the time of issue of my Decision.
12. Whilst I have sympathy with the applicant in respect of the timing of changes to the supporting SPD which occurred during the course of the appeal, I have had to base my appeal Decision on adopted policy in place at the time of its issue. Moreover, I cannot say whether my appeal Decision conclusion on this matter would have been different had I determined the appeal earlier on the basis of the Council's previously sought transport contribution.
13. The above run of events resulted in the applicant having to submit additional evidence and make amendments to the UU, in response to the submission of further evidence by the Council in relation to the new 2024 SPD and more recent appeal decisions which took it into account.
14. However, I find that the Council's ongoing evidence reasonably supported this refusal reason and that the applicant's additional submissions were necessary in response.
15. Having regard to refusal reason 5, at the time of the determination of the planning application, no substantive local hydrological evidence had been submitted by the applicant to demonstrate that surface water from the development would drain into the Broad Rife catchment and thereby avoid discharging into the Chichester Harbour SPA.
16. The implementation of an appropriately designed¹ SuDS drainage scheme would be capable of providing water quality improvement to all surface water leaving the

¹ In accordance with CIRIA 753 The Suds Manual

site, or discharging into the ground, so that even if the surface water did subsequently reach the SPA, it would have been treated on site and pose no pollution risk to the SPA.

17. However, at the time of the determination of the planning application, no such SuDs scheme details were before the Council. As such, and notwithstanding that the Council's Drainage Authority raised no objection and was satisfied that a drainage condition could be imposed, I find that, having regard to the requirements of the Habitats Regulations, the Council acted reasonably in taking a precautionary approach to this matter.
18. This is because, based on the submitted evidence at the time of the planning application decision, I consider that the Council had insufficient information to provide confidence that a suitable SuDS scheme would be capable of being implemented on the appeal site.
19. My appeal Decision explains why I found this matter to be capable of being dealt with by means of a Suds condition. In coming to this view, the applicant's submitted Surface Water Drainage Strategy which comprised additional supporting information regarding this issue at the appeal submission stage, provided a key piece of evidence to enable me to reach this conclusion.
20. It also formed part of my reasoning in respect of the Appropriate Assessment (AA) that I carried out as the competent authority under the Habitats Regulations, which was not disputed by the Statutory Nature Conservation body, Natural England (NE), who I subsequently consulted.
21. I would normally have expected the Council to have carried out an AA and consulted NE prior to the determination of the planning application or during the course of the appeal, having regard to refusal reason 5. However, given my findings above, in the specific circumstances of this appeal, I do not find that this has amounted to unreasonable behaviour resulting in needless expense in relation to the appeal.

Conclusion

22. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Leonard

INSPECTOR