



Costs Decision

Hearing held on 28 January 2025

Site visit made on 28 January 2025 (accompanied) and 29 January 2025 (unaccompanied)

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2025

Costs application in relation to Appeal Ref: APP/C1435/W/24/3343709 Land at Old Orchard House, Horebeech Lane, Horam TN21 9DZ

- 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 Chris Baron of Chailey Homes Ltd for a full award of costs against Wealden District Council.
 - The appeal was against the refusal to grant consent subject to conditions of consent, agreement or approval of details required by conditions of a planning permission for the erection of up to 38 dwellings, access, landscaping and other associated infrastructure, granted on 12 July 2022.
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. Parties in appeals normally meet their own expenses. However, paragraphs 16-028-20140306 and 16-030-20140306 of the Planning Practice Guidance (PPG) advise that irrespective of the outcome of an appeal, 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. Paragraph 16-049-20140306 of the PPG states authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This includes persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated is acceptable, departing from established caselaw, making vague, generalised or inaccurate assertions about a proposal's impact unsupported by any objective analysis, and not determining similar cases in a consistent manner.
4. The appellant asserts that the Council has behaved unreasonably because it has determined the application based upon speculation, it has not had due regard to the advice of Southern Water (SW), and it has not substantiated objections to the effect of the proposal upon biodiversity and designated sites. Moreover, the Council has been unreasonable in the way it interpreted condition 13 because it is expecting the appellant to address matters beyond its control in the wider network, engaging in matters not relevant to planning. It has also not determined cases in a consistent manner in accordance with well-established principles in other cases.

5. The Council considers it interpreted condition 13 correctly having regard relevant caselaw¹, it has had due regard to SW's advice, departed from that advice for sound reasons, and the cases advanced by the appellant are in respect of issues about whether to impose a condition, not how condition 13 should be interpreted.
6. SW does not object to the scheme. However, when asked by the Council to respond to some fundamental matters that underlie its views, SW has offered little further of substance to logically explain its conclusions and address the Council's questions. SW does not appear to dispute there have been outflows outside exceptional conditions, or provide a substantive explanation of how its conclusions have been reached in terms of headroom, and why there would be no increased water pollution because of the appeal proposal.
7. Not all types of overflows are legal, and based upon the evidence before me, the appeal proposal would be likely to result in unauthorised or illegal outflows. The appellant has provided limited substantive evidence in respect of off-site infrastructure capacity. In the absence of demonstrating capacity to satisfy some fundamental concerns, there is sufficiently compelling and cogent reasons for departing from SW's advice.
8. Condition 13 was imposed to ensure suitable foul drainage, in the context of an SW concern about the wider network and interested party representations. The Inspector for the Outline Planning Permission (OPP) was satisfied a solution could be achievable. While condition 13 does not specify off-site matters must be considered, given SW's response to the application included that concern², and was taken into consideration in imposing condition 13, off-site infrastructure is a relevant matter to condition 13's reasonable and ordinary meaning.
9. The Inspector for the OPP considered condition 13 passed the test of reasonableness and it is directly relevant to planning, having regard to Policy WCS7 of the Core Strategy Local Plan (2013) (the CSLP). While there are differences between this appeal case and the circumstances of that in the Barratt judgement, there are findings of relevance within the judgement, and the Council's application of its principles are not unreasonable. The Council is not necessarily seeking off-site works, but sufficient evidence there is adequate capacity in the system. I do not consider the Council has overreached, or interpreted the condition unreasonably, so unreasonable behaviour is not demonstrated in this regard.
10. The judgement in *An Taisce*³ explains that decision makers can have regard to other regulatory regimes. However, the weight given to them, depends upon the specific circumstances in each case. Having considered the appeal cases provided, they deal with the principles of Inspectors' reasoning for finding that each permission should not have been refused due to foul water drainage. They resulted in the imposition of conditions of varying forms requiring the submission and approval of schemes for foul water drainage for consideration by the relevant Local Planning Authority. This appeal is about discharging a subsequent condition. Therefore, the cases do not demonstrate unreasonable behaviour by the Council.
11. The provisions of the National Planning Policy Framework (2024) (the Framework) in respect of pollution and pollution control regimes are considered in my decision.

¹ *Barratt Homes Ltd v Welsh Water* [2010] PTSR 651 and [2009] Env LR 25, *Trump International Golf Club Scotland v Scottish Ministers* [2016] 1 WLR 85.

² 5th paragraph of Southern Water Letter dated 14 February 2022.

³ *R (An Taisce) v SSECC* [2014] EWCA Civ 1111.

The Framework is not legislation, it is policy that is an important material consideration. However, it does not usurp the primacy of the development plan under section 38(6) of the Act. The proposal is contrary to Policy WCS7 of the CSLP due to significant concerns that infrastructure would not ensure suitable foul drainage. For the reasons set out in my decision letter, based upon case specific evidence, a departure from Framework paragraph 201 is in principle justified. Therefore, unreasonable behaviour by the Council is not demonstrated in these regards.

12. The Council asserted there is the potential for adverse effects upon three Sites of Special Scientific Interest (SSSIs) referred to in my decision letter, and the Pevensey Levels Special Area of Conservation (SAC) as a designated habitats site. The Council did not consult Natural England (NE) in respect of the alleged effects. While I note the Council's comments in respect of Impact Risk Zones, the Council had the opportunity to obtain specialist advice in respect of the designated sites. From what I can see it did not, and it did not provide an ecologically qualified witness, or demonstrate pathways to impact or the likelihood of harm to features of interest for the SSSIs.
13. Through the Statement of Common Ground, the Council agreed there would be no effect upon the SAC. However, pursued an assertion there would be adverse effects upon SSSIs. NE's advice is based upon SW's assertion of headroom, which is not reasonably explained. However, for SSSIs the Council should be able to demonstrate an impact pathway and a likelihood of harm to features of interest. Despite further questioning in the hearing, it did not. I can come to no other view than that the Council has made vague, generalised or inaccurate assertions about a proposal's impact unsupported by objective analysis. This is unreasonable behaviour and has resulted in unnecessary and wasted expense in the appeal process for the appellant. Therefore, a partial award of costs is justified.

Costs Order

14. 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 Wealden District Council shall pay to Mr Chris Baron of Chailey Homes Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred from contesting the alleged harm to biodiversity and designated sites; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the 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.

Mr D Szymanski

INSPECTOR