



Costs Decision

Hearing held on 16 August 2022

Site visit made on 17 August 2022

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Costs application in relation to Appeal Ref: APP/C1435/W/22/3296579 Land west of Station Road, Hailsham

- 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 Gleeson Strategic Land Limited and Rydon Homes Limited for a full award of costs against Wealden District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for outline planning application (with all matters reserved except for access) for the erection of up to 200 residential dwellings including affordable housing with the provision of vehicular, pedestrian and cycle access from Station Road, incorporating open spaces, sustainable urban drainage systems, associated landscaping, infrastructure and earthworks.
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Decision

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

Reasons

2. The Council refused planning permission for a single reason which, in essence, stated that there would be an unacceptable traffic impact on the Station Road/South Road junction, as required mitigation was reliant on measures contained in the Sustainable Transport Strategy (STS), and there were considerable doubts that such mitigation was deliverable.
3. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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.
4. This application is predicated on the Council's refusal of planning permission, which was against the recommendation of the Council's professional officers. Therefore, in summary, it is put to me by the applicants that the members of the planning committee took a different course of action in refusing the planning application without adequate reason to do so, and refused an application that should have clearly been permitted. Moreover, the Council decided not to defend the single reason for refusal less than one week before the hearing opened. It is also alleged that in producing their Statement of Case, the Council made vague or inaccurate assertions about the proposal's impact, unsupported by objective analysis. All of which led to wasted expense in defending an appeal.

5. PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and fails to produce substantive evidence to substantiate a reason for refusal¹.
6. Implicit in the Council's late decision not to defend their only reason for refusal was that the development should be permitted. Reinforcing this is the fact that other similar developments had been granted planning permission by the Council on land nearby within the last few years². Consequently, as set out in my Section 78 decision, this is a development which clearly should have been granted planning permission.
7. Moreover, whilst it is open to elected members of a planning committee to exercise their own planning judgment, any such decision must be fully justified in the face of opposing evidence. That was not the case here. There was a failure to address the fundamental question, which went to the heart of the Council's reason for refusal, as to whether the STS measures were even necessary to mitigate the traffic impacts of the proposal on the junction.
8. Not only did I find that the STS measures were not necessary to address junction capacity issues, but the evidence that the Council produced with the appeal did not challenge in detail the applicant's detailed analysis of the future capacity of the South Road/Station Road signalised junction, which concluded that it would comfortably operate within design capacity even without the measures contained in the STS³.
9. The Council's defence is that they relied primarily on the East Sussex County Council (ESCC) Highways Authority comments at various stages throughout the process. However, that was not borne out in the Council's appeal Statement of Case which questioned the deliverability of the STS (which ESCC did not object to) and the veracity of several other technical aspects of the applicant's Transport Assessment⁴, none of which were questioned by ESCC in their consultation response, nor were they included in the Council's reason for refusal. In short, the Council's appeal case lacked detailed objective analysis to counter the applicant's junction capacity analysis, and contained commentary on various other matters which were vague and unsupported by any objective analysis. I have no hesitation in concluding that the Council's behaviour was unreasonable.
10. I appreciate that the Council withdrew their evidence in defence of the appeal as soon as ESCC agreed that the STS measures were not necessary to make the junction acceptable in traffic capacity terms. Be that as it may by the time the Council took the decision not to defend their only reason for refusal, appeal statements had been exchanged between the main parties, and the applicants had incurred cost in preparing its case for hearing. As I have stated above, this does not justify the Council's unreasonable behaviour in refusing an application that should have been permitted, and failing to produce detailed and objective analysis to support their reason for refusal. As a result, this resulted in wasted expense in the appeal process.

¹ PPG - Paragraph: 049 Reference ID: 16-049-20140306

² Phases 1 and 2 – see S78 decision

³ Appeal document ref - ITB15695-009b TN – dated 13 December 2021

⁴ And associated documents

Conclusion

11. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in PPG, has been demonstrated and that an award of costs is justified.

Costs Order

12. 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 Gleeson Strategic Land Limited and Rydon Homes Limited the costs of the appeal proceedings described in the heading of this decision.
13. The applicants are now invited to submit to Wealden District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as the amount, such costs to be assessed in the Senior Courts Costs Office if not agreed.

Matthew Woodward

INSPECTOR