



Costs Decision

Site visit made on 22 September 2020

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14th October 2020

Costs application in relation to Appeal Ref: W/4000394 10 acre field north of Grevatts, Yapton

- 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 Andrew Tice of Landlink Estates for a full award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for single chapel crematorium with car parking, landscape works, surface water drainage features and associated highway improvements.
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Decision

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

Reasons

2. The 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. Unreasonable behaviour may be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. The PPG also advises that costs applications may relate to events that occurred before the appeal. Behaviour and actions by the parties at the time of the planning application can therefore be taken into account when considering whether or not costs should be awarded.
3. Paragraph 049 of the Planning Practice Guidance advises that Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
4. The Appellant submits that the Council has acted unreasonably both procedurally and substantively in that Members did not properly regard the expert evidence of the professional advisors. As such the appellant contends that Members of the Committee assessed the proposal based on considerations that were not material, namely: perceived harms from the use of the site, and that these perceived harms were not substantiated in evidence.
5. It is clear that some of the Members who had heard the representations at the first Committee were not in attendance for the second Committee when a decision was made. However, those Members would have had access to the

recording of the first Committee, and would have knowledge of the site and the issues surrounding the application. The Council is not duty bound to follow the advice of its professional officers, and in this case the Members appeared to have placed significant weight on their own experience of the highway network, and the experiences of local residents incoming to a decision to refuse the application.

6. In circumstances where the Members of the Council reach a different decision to that of the advice of the Council's professional officers, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate this reasoning.
7. The reasons for refusal relate solely to the effect of the proposal on highway safety. I note that the Council's defence in respect of this application for costs sought to highlight that the proposal would be a departure from the development plan. Whilst that may be the case, this was not raised as a reason upon which to refuse the application, and was not raised as a matter in dispute in the agreed Statement of Common Ground. As such the reason in dispute related to the effect of the proposal on the highway network. It was in relation to this reason that the appellant sought to demonstrate that the proposal would not have an adverse effect on the highway network, and it was for the Council, having gone against the advice of its professional officers, to demonstrate that the proposal would be harmful in this regard.
8. The Council has gone to some length to provide evidence of those with local knowledge who have sought to challenge the evidence submitted by the appellant. Local knowledge is important and should be used to shape the delivery of development. However, there has been very little evidence submitted to demonstrate that the technical assessments of the effect of the proposal on the highway were flawed or factually wrong. The assessments submitted by both the applicant and the Council acknowledge the existing levels of traffic on the highway and possible safety concerns, and conclude that subject to highway improvements and mitigation the development would be implemented in a manner that would not be detrimental to highway safety.
9. The Council is correct that the National Planning Policy Framework (the Framework) does not define 'severe' as referred to in paragraph 109. The Cambridge dictionary defines severe as causing great pain, difficulty, worry, damage etc. Therefore, whilst the Framework does not provide a definition I consider it reasonable to use the ordinary meaning of the word. The Council contends that Members were entitled to come to a conclusion on the meaning of the word severe and assess the scheme accordingly. However, the starting point for determining an application should be the development plan. Policy TSP1 of the Arun Local Plan advises that the Council "will ensure that development provides safe access onto the highway network, contributes to highway improvements and promotes sustainable transport".
10. I have assessed the proposal against the development plan, having regard to the technical evidence submitted and the representations from local residents, and have found that the proposal would comply with both the development plan, and national policy.
11. Therefore, I find that, having regard to the provisions of the development plan, national policy and other material considerations, the development should reasonably have been permitted. The refusal of permission therefore

constitutes unreasonable behaviour contrary to the basic guidance I the Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.

12. Accordingly I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

13. 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 Arun District Council shall pay to Landlink Estates, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Arun District 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.

J Ayres

INSPECTOR