



## Costs Decision

Inquiry held on 6-8 September 2022

Site visit made on 8 September 2022

**by Michael Boniface MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 28 September 2022**

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### **Costs application in relation to Appeal Ref: APP/C1435/W/22/3297419 Mornings Mill Farm, Eastbourne Road, Lower Willingdon, BN20 9NY**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Peter & Robert Vine for a full award of costs against Wealden District Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for comprehensive development of a mixed-use urban extension comprising up to 700 dwellings including affordable housing, 8,600 square metres of employment floorspace, medical centre, school, community centre, retail, playing fields, children's play space, allotments, amenity open space, internal access roads, cycle and footpath routes and associated landscaping and infrastructure.
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### **Decision**

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

#### **The submissions for Peter & Robert Vine**

2. The application was made in writing. In summary, it says that a previous appeal dealt with a similar scheme on the site and established limited and specific issues that resulted in it being dismissed. These highway related issues were addressed and overcome in the current appeal, to the satisfaction of the relevant highway authorities and Council Officers.
3. This was conveyed to Members of the Council in detailed advice, who chose to refuse planning permission nonetheless. Members were further advised that the Council had been unable to identify any professional witnesses willing to act for the Council in defending the reasons for refusal and that persisting with the appeal would likely be futile and put the Council at risk of an award of costs.
4. The Council chose to persist with the appeal and submitted a Statement of Case. Less than four weeks before the Inquiry was due to open, the Council changed its position and advised that it would offer no evidence to support its reasons for refusal or subsequent case. The Council also went so far as to publish a statement on its website stating that "councillors were told by independent legal experts they could not defend the indefensible."
5. The Council has acted unreasonably in refusing planning permission for a development that clearly should have been granted, having regard to the available evidence and the issues identified in the previous appeal. Despite advice and the lack of professional evidence to support its reasons for refusal, the Council persisted with the appeal and did not take the opportunity to

review its position early on in the appeal process. No evidence was submitted to the Inquiry to support the vague, generalised and inaccurate assertions it made in its Statement of Case and the Council has never attempted to support its position with any objective analysis.

6. The appellant has been put to considerable expense in pursuing an appeal that should never have been necessary, as well as the expense involved in subsequently making a costs application.

### **The response by Wealden District Council**

7. The Council's response was made in writing. In summary, it says that the Council's decision not to defend the appeal was only four months after the appeal was made. The appeal progressed very quickly and given the tight timeframes involved, an award is not justified or should only be partial. Costs awards are discretionary and parties in planning appeals are generally expected to meet their own costs.
8. There was a change in circumstances between the previous appeal and the current one. Specifically, a change to the plan making regime and growing concerns about Southern Water's activities. There has also been some consideration given to removing the appeal site, as a site identified for development in the Core Strategy Local Plan (2013) (CS). As such, if an award of costs is considered to be justified, this should be limited to the highway matters only. The Council reviewed its case throughout the appeal process.
9. The scheme, and the loss of the site to it, are highly controversial as reflected by the exceptional numbers of objections and representations received by the Council. This included representations from the local Member of Parliament.

### **Reasons**

10. The Planning Practice Guidance 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.
11. The Council, including its Members, were no doubt very familiar with the appeal site and the relevant planning issues, having defended an appeal relatively recently. The issues were comprehensively debated at the previous Inquiry and the points on which the previous appeal failed were firmly established. Much time has evidently been spent by the appellant in addressing these issues to the satisfaction of the highway authorities and the Council's own Officers.
12. It is inexplicable why the Council should subsequently refuse planning permission on highway grounds and the decision to do so was certainly not explained in committee minutes or the subsequent Statement of Case. I do not accept that there has been any material change in circumstances since the previous appeal that should justify new issues being raised. The development plan remains the same now as it did for the previous appeal and the subsequent withdrawal of a potential replacement Local Plan removes any possibility of the CS site allocation changing any time soon. Like with the highway matters, concerns about "Southern Water's activities" have not been articulated and foul drainage matters could have been dealt with by condition.
13. The appeal progressed in line with a normal appeal timetable and the Council had more than sufficient time to consider its position. Whilst it does seem that

there were regular reviews of the case, none of these reviews translated into action until very late in the appeal process after the appellant had been put to the expense of preparing for the appeal, including the preparation of Proofs of evidence by professional witnesses.

14. The Council's conduct in this case is the epitome of unreasonable behaviour. It has delayed development which clearly should have been permitted, having regard to its accordance with the development plan and all other materials considerations. These include the previous appeal decision, which made it very clear what the specific issues were that needed to be addressed. The Council has failed to produce evidence to substantiate each reason for refusal on appeal, instead making vague, generalised or inaccurate assertions about the proposal's impact, unsupported by any objective analysis.
15. Had the Council properly considered the planning application, having regard to the available evidence, it would have granted planning permission. This is notwithstanding local controversy and the number of objections. Whilst these are an important consideration, quantity of objections alone cannot be determinative in a decision-making regime that is informed by policy and evidence. As such, the entire appeal, and indeed the costs application, should have been unnecessary.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

17. 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 Peter & Robert Vine, the costs of the appeal proceedings described in the heading of this decision and the expense incurred in making a costs application; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is 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 to the amount.

*Michael Boniface*

INSPECTOR