
Costs Decision

Site visit made on 16 August 2016

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23rd September 2016

**Costs application in relation to Appeal Ref: APP/X0360/W/16/3146038
80 Evendons Lane, Wokingham RG41 4AG**

- 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 Graeme Canning for a full award of costs against Wokingham Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for the demolition of existing detached garage and erection of a detached dwelling house and a detached garage building to serve the existing house.
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Decision

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

Reasons

2. The application for costs does not clarify whether a full or partial award is sought. Consequently, I have considered it on the basis of a full application.
 3. Paragraph 030 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the 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.
 4. Paragraph 047 of the PPG states that local planning authorities are required to behave reasonably in relation to procedural matters at appeal and sets out examples of unreasonable behaviour, including withdrawal of any reason for refusal. Paragraph 049 also 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.
 5. The local planning authority's decision notice sets out two reasons for refusal. The first reason for refusal relates to character and appearance. In this respect a case has been made that the proposed development would be unacceptable. Indeed, it will be seen from my decision that I agree with the Council that there would be sufficient reason to justify withholding planning permission on this issue. It follows therefore that I am satisfied that the Council has shown that it was able to substantiate its first reason for refusal.
 6. The second reason for refusal relates to the proposals failure to secure mitigation for the adverse effect on the Thames Basin Heaths Special Protection Area (SPA). However, the local planning authority has confirmed that the access to a site is
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the recognised point at which to measure the distance to the SPA and that this was incorrectly applied in the determination of the application. Accordingly, as the entrance to the appeal site falls within the 5 – 7 km zone, rather than within 5 km, the proposal does not meet the threshold requirement for mitigation. Confirmation of this was received on 19 May 2016.

7. Although the appeal start date is also 19 May 2016, the appellants have confirmed that the Council was in receipt of the appeal documents when the appeal was lodged more than 2 months earlier. Accordingly there can be no doubt that the appellants have incurred abortive costs for the preparation of the appeal statement, insofar as it relates to the second reason for refusal. This remains the case whether or not the appellants would have researched SPA policy for the application submission.
8. The Council has raised issue that the appellants did not seek pre-application advice. However, I fail to see why the requirement for mitigation or otherwise would have been picked up at this stage, if this was not correctly applied during the determination of the application.
9. A draft Section 106 Agreement was also submitted with the appeal on 5 May 2016, prior to the Council confirming that the proposal would not meet the threshold requirement for mitigation. Again therefore, there can be doubt that the appellants have incurred abortive costs for the preparation of this document. Moreover, as the covering email explains that the Agreement had been signed by the appellants and was with the Council for endorsement, I cannot agree with the Council's assertion that the Agreement had not reached a significantly advanced stage.
10. Whether or not the case officer was aware of contact over the preparation of the Section 106 Agreement until 26 April 2016 does not change the fact that the Council was engaged with the appellants on this matter as early as 18 February 2016. This is evidenced in the Council's Appendix two to its cost rebuttal. Indeed, as highlighted by the appellants, this same chain of email confirms that the Council's Service Manager, Development Management was notified of the preparation of the Section 106 Obligation on 21 March 2016. I do not therefore agree that no attempt was made by the appellants to clarify the implications of the SPA mitigation or that the Council took immediate steps to notify the appellants that the second reason for refusal needed to be withdrawn.
11. The Council has highlighted that appellant was not aware that the measurement distance from the SPA is taken from the site entrance. Be that as it may, it is incumbent on the Council to ensure that it has correctly applied such matters and this should not be reliant upon whether or not the appellants sought to clarify this matter. The fact that the Council did not and the delay taken to formally withdraw its second reason for refusal amounts to unreasonable behaviour, contrary to the guidance in the National Planning Policy Framework and the PPG. As a consequence, the appellants have been faced with the unnecessary expense of the preparation of an appeal statement and Section 106 Agreement.

Conclusion

12. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of the second reason for refusal and that a partial 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 Wokingham Borough Council shall pay to Mr Graeme Canning the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal, relating to the failure to secure mitigation for the adverse effects on the SPA, in conflict with Wokingham Borough Core Strategy Development Plan Document Policy CP8 and Policy NRM6 of the South East Plan - Regional Spatial Strategy for the South East.
14. The applicant is now invited to submit to Wokingham Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Richard S Jones

Inspector