

Costs Decision

Site visit made on 12 December 2016

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 28th December 2016

Costs application in relation to Appeal Ref: APP/R3650/W/16/3155800 Newlands, 132 Horsham Road, Cranleigh, Surrey GU6 8DY

- 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 and Mrs W Ashton for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for the construction of two detached houses on land to the rear of Newlands.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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 expense in the appeal process.
 3. The application for costs essentially relied upon alleged substantive unreasonable behaviour by the Council in preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Specifically, this related to whether a further ecological survey was required in respect of the presence or absence of great crested newts on or near to (essentially within 500m) the appeal site.
 4. The applicants considered that it was not reasonable to require a further survey, particularly having regard to the relevant findings of the Preliminary Ecological Assessment (incorporating Extended Phase 1 Habitat Survey), biodiversity records from the Surrey Wildlife Trust (SWT), and the advice set out in Paragraph 99 of Circular 06/2005 that, 'developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development'. The applicants further contend that in unreasonably refusing the application, the Council delayed a housing development.
 5. The Council points out that Paragraph 99 of the Circular also states, 'it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'. Furthermore, the Council was advised by SWT on more than one occasion that there was insufficient information provided to allow the Council to be confident
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that the proposed development would not be detrimental to the protected species. The Council uses SWT for expert ecology advice on planning applications.

6. Notwithstanding that I came to a different conclusion to the Council in allowing the appeal, I am satisfied that, while the Council took a precautionary approach, it was not unreasonable in its refusal to grant planning permission. It made a rational planning judgement, based on the evidence available, including that provided by its ecology advisor. It set out a complete, precise, specific and relevant reason for refusal in its decision notice, which clearly stated the saved policy of the Waverley Borough Local Plan 2000 that the Council found the proposal to conflict with.
7. The Council also set out a reasoned justification in its report and subsequently substantiated its case at the appeal. I note the applicants' concerns that the Council's refusal to grant planning permission in this case was inconsistent, in terms of its determinations in relation to great crested newts, with planning permissions granted in respect of nearby sites. Notwithstanding, this does not sway my view that the Council behaved reasonably in this case in determining the application on the planning merits and evidence available to it at that time.

Conclusion

8. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is therefore not justified.

Catherine Jack

INSPECTOR