
Costs Decision

Site visit made on 7 December 2016

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 14 February 2017

**Costs application in relation to Appeal Ref: APP/K2610/W/16/3156445
Oasis Sport and Leisure Centre, 4 Pound Lane, Thorpe St Andrew, Norwich
NR7 0UB**

- 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 Serruys Property Company Ltd for a full award of costs against Broadland District Council.
 - The appeal was against the refusal of planning permission for the re-development of Oasis Leisure Club, including the erection of replacement spa and wellbeing club (full planning) and provision of 27 residential units (outline) including affordable housing units.
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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 (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
 3. Serruys Property Company Ltd applied for a full award of costs. It asserts that the Council had no justification to come to its sole reason for refusal, and as a result it unreasonably prevented or delayed development which should have been permitted on the basis of evidence provided to the Council by the applicant and statutory consultees.
 4. The Council's planning officer recommended in the committee that planning permission should be granted. The Planning Committee were entitled to come to a contrary view but the Guidance requires that decisions must be supported by evidence rather than vague and generalised assertions.
 5. The Council's reason for refusal stated that the development of the site would involve the removal of numerous trees (both individual and groups) and the loss of a significant environmental asset in the form of an area of improved grassland to the north of the site, which lies immediately adjacent to a County Wildlife Site. The cumulative impact of the new leisure centre and residential development would therefore cause "significant harm which it is considered cannot be adequately mitigated or compensated for and which has not been adequately justified."
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6. The applicant undertook an ecological survey report¹ of the site which identified a medium population of Great Crested Newts (GCN) within Pond 7 about 50m north east of the site, and the development would have a minor to intermediate negative impact on this population. There would also be a minor adverse on bats. The report recommended a number of mitigation and compensation measures that would be likely to include GCN capture and translocation, advice for contractors and monitoring. In allowing the appeal I have imposed a condition requiring details to be drawn up and agreed with Natural England during the application process for a European Protected Species licence.
7. The Council has referred to the value placed on the site by local residents as 'meadow land' but it does not form part of any designated wildlife site, and no evidence has been provided to support the conclusion that there would be significant harm as a result of the proposal. Norfolk County Council's Senior Green Infrastructure Team was consulted on the application, and concluded that the ecological report submitted by the applicant conformed to national best practice for such documents and that subject to conditions there should be no ecological constraints in regard to the proposal.
8. Furthermore, the Council's arboricultural officer considered that the most significant trees would be retained on site and with additional planting and protection of existing trees during construction as set out in an arboricultural impact assessment and method statement and a tree protection plan, there would be no objection to the scheme. These measures can also be secured by condition.
9. The applicant also contends that the Council has introduced new policies to support their case relating to the potential loss of the community use. The Council did not refer to Policy 8 (Culture, leisure and entertainment) of the Joint Core Strategy for Broadland, Norwich and South Norfolk (2011) or Policy CSU2 (Loss of community facilities or local services) of the Development Management Development Plan Document (2015), but made reference to them in its appeal statement. However, it is not clear whether the Council sought to rely on this matter in objecting to the scheme.
10. The Council's concern appears to me to ensure that a leisure use would be retained on site as proposed by the applicant, and the parties have agreed that this could be secured by the imposition of a condition in relation to phasing of the development. Whilst the applicant is of the view that extra expense has been incurred in addressing this matter, it has been dealt with relatively briefly in further submissions and therefore any expense would not have been significant.
11. Nonetheless, taking all of the above into account, I conclude that the Council's reason for refusal has not been substantiated. The Council's unreasonable behaviour in this respect led the applicant to incur unnecessary or wasted expense in submitting the appeal, as set out in paragraph 49 of the Guidance. A costs award is therefore justified.

¹ Protected Species Survey – Wild Frontier Ecology (July 2015)

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 on that behalf, IT IS HEREBY ORDERED that Broadland District Council shall pay to Serruys Property Company Ltd the costs of the appeal proceedings described in the heading of the decision.
13. The applicant is now invited to submit to Broadland 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. 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.

Claire Victory

INSPECTOR