
Costs Decision

Site visit made on 15 November 2016

by L Gibbons BA (Hons) MRTPI

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

Decision date: 13th March 2017

Costs application in relation to Appeal Ref: APP/L1765/W/16/3153276 Land adjacent Lodge Green, Whiteley Lane, Titchfield, Hampshire PO15 6RW

- 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 Whiteley Developments Ltd for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission for the erection of a 5 bedroom detached dwelling with a detached garage.
-

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 where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. There was no reason for refusal relating to ecological matters. However, the applicant refers to the Council failing to have proper regard to the responses of Natural England (NE) in relation to the adjacent Site of Special Scientific Interest (SSSI). It is suggested by the applicant that had the Council considered the NE position properly that it may have been a positive aspect in favour of the scheme. However, I am not persuaded that this would have changed the Council's stance taking into account their position on other matters. The Council referred to a number of conditions attached to the Council's response to the applicants' grounds of appeal, which would have included conditions relating to habitat management and a proposed buffer zone. However, these conditions were missing from this response, and they were provided to the applicant at a late stage in the appeal process. This resulted in additional correspondence as part of the appeal and I accept that there was a short time for the applicant to assess these conditions.
 4. However, the applicant's consideration of these conditions would have been necessary in any event at whatever stage these were provided. I note there were some changes to the conditions proposed by the Council. However, I have taken account of the applicant being aware of the initial contents of the conditions as these had been discussed with the applicant's ecology consultant and NE. I therefore consider that the Council did not behave unreasonably on this matter.
-

5. In respect of landscape and settlement gap matters as set out in the reason for refusal 2, the applicant had provided a Landscape and Visual Impact Assessment and a Landscape Appraisal of the Meon Settlement Gap. The Council did not comment on the contents of these reports. I accept that verbal advice on the planning application was provided by the Council's landscape officer although this is not referred to in the officer's report in the consultations section, and it is not clear what that advice contained.
6. The Council's concerns in respect of reason for refusal 2 as set out in the officer's report is very brief, and is not further explained in the response to the grounds of appeal. The reasoning on landscape character does not provide a reasonable evidential stance to support its stance. That said, in respect of the landscape character the appeal did not succeed in part due to the effect of the proposed scheme on the character and appearance of the area. The applicant's evidence on that part of the reason for refusal 2 was therefore a necessary part of the appeal process.
7. However, Policy CP18 of the Winchester Local Plan Part 1 – Joint Core Strategy (LPP1) relates to settlement gaps, and I found that the proposal would not physically or visually reduce the gap. The Council provided no evidence or justification why the proposal would cause harm in this respect. I find that the Council behaved unreasonably by failing to substantiate this part of the reason for refusal. The applicant incurred wasted expense in defending the matter.
8. In respect of the settlement boundaries, Policy MTRA4 of the LPP1 relates to development in the countryside and I found the proposal to be in conflict with this policy. The Inspector's report into the Winchester Local Plan Part 2 had not been published although the Inspector's initial findings did not refer to any changes to the settlement boundaries. Whilst the parties did not agree on the implications of the initial findings, I am not persuaded that this significantly affected the Council's consideration of the scheme being located within the countryside.
9. I therefore find that unreasonable behaviour resulting in unnecessary expense has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Winchester City Council shall pay to Whiteley Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to Policy CP18 of the LPP1 in reason for refusal 2; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Winchester City 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.

L Gibbons

INSPECTOR