

Costs Decision

Site visit made on 4 January 2017

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

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

Decision date: 20th March 2017

Costs application in relation to Appeal Ref: APP/P2114/W/16/3155436 Land at former Upper Chine School, Lower Site, Luccombe Road, Shanklin Isle of Wight

- 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 Martyn Davies (Ryde School with Upper Chine) for a full award of costs against Isle of Wight Council.
 - The appeal was against the refusal of the Council to grant outline planning permission for development described as 'the development of 6 detached houses, vehicular access from Luccombe Road, internal roads, parking provision, landscape works and associated ancillary works on the former Upper Chine School sports pitch (Lower Site), Shanklin'.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) paragraph 030 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. PPG paragraphs 047 and 049 set out examples of unreasonable behaviour that may give rise to either a procedural or substantive award against a local planning authority. In this regard, the appellant refers to a number. I will deal with each in turn.
 4. The appellant suggests that the Council, in dealing with the appeal application demonstrated a lack of co-operation with the other party. The Council, in this regard, made a judgement that its concerns could not be overcome in the absence of significant amendment to the indicative layout and determined the appeal application without seeking additional information from the appellant.
 5. The Council's timing in relaying its concerns to the appellant is unfortunate. Further, I accept that its concerns regarding the proposed access were addressed through the submission of further detail. However, other concerns were not. Moreover, the Council took the view that they were not resolvable at reserved matters stage or through suitable planning conditions. Even though on some of the main issues that I identified, I have taken an alternative view to the Council, overall, I consider in this regard, that the Council acted reasonably. Further, I have taken note of advice set out in PPG paragraph 028, which states that, the aim of the costs regime is to discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.
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6. The appellant suggests that the Council, in refusing the appeal application, prevented development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations. The Council opposed the appeal application. I came to the same conclusion at appeal. In this regard, I consider that the Council acted reasonably.
7. Further the appellant suggests that the Council failed to produce evidence to substantiate each reason for refusal on appeal and provided vague, generalised assertions about its impact, which were unsupported by any objective analysis. However, in this respect the Council analysed the locality, the impact of the proposal on its character and appearance, and although there was confusion at application stage regarding separation distances of proposed dwellings, the living conditions of future occupiers and the impact on protected species. Whilst I came to a different view on some of these issues, I consider overall, that the Council substantiated its reasons for refusal and acted reasonably in this regard.
8. The appellant also suggests that the Council refused planning permission on grounds that were capable of being dealt with by planning conditions. The Council accepted at appeal that its concerns regarding the proposed access and drainage could be dealt with at a later stage. Whilst on some of the main issues, I came to a different conclusion to that of the Council, I accept its view that there was not scope to address its concerns with planning conditions as it was not convinced that the amount of development proposed could be accommodated on the appeal site due to the site constraints. In this regard, I consider that the Council acted reasonably.
9. The appellant finally suggests that the Council did not determine similar cases in a consistent manner and refers to a number of recent cases. However, in my appeal decision, I explain that the cases referred to do not replicate the circumstances of this appeal. I take the same view of those submitted with this costs application, in as much as, for most, they demonstrated, to the satisfaction of the Council, that the development proposed could be accommodated on the site without unacceptable harm to the character and appearance of the locality. I note that in the last case brought to my attention, for a much larger development, the Council took an alternative view. However, it does not replicate the circumstances of this appeal. Overall, in this respect, I consider that the Council acted reasonably.

Conclusion

10. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated and an award of costs is not justified.

R Barrett

INSPECTOR