
Costs Decision

Site visit made on 20 March 2017

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 5 June 2017

Costs application in relation to Appeal Ref: APP/N1730/W/16/3166130 Land at 33 Basingbourne Road, Fleet, Hampshire, GU52 6TG

- 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 John Keogh of Kona Developments Ltd for a full award of costs against Hart District Council.
 - The appeal was against the refusal of planning permission for the erection of two three-bedroom dwellings.
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Decision

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

Reasons

2. The National 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.
 3. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
 4. The Appellant submits that the Council has acted unreasonably in that its planning officer recommended that the application be approved, and that the harm identified in the reason for refusal did not amount to a material harm sufficient to warrant refusal of the application. Additionally, the council had a five month delay in presenting the application to a Planning Committee meeting, which further delayed development which should clearly have been permitted being in accordance with the development plan, national policy and other material considerations.
 5. The Council have correctly identified that a Planning Committee decision which goes against officer advice is not a reason to give an award of costs in itself as the Committee were entitled to come to their own conclusions on the merits of the proposal.
 6. However, a key issue is whether the Council have provided sufficient evidence to substantiate their reason for refusal at appeal.
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7. In this case, only very limited evidence has been given to substantiate the issue over the location of the bins on collection day, with the clearest evidence being supplied by the Appellant in demonstrating that there would be little or no harm arising.
8. In relation to the Council's view that the proposal would be an overdevelopment of the site, the Council acknowledge that there is already back land development in the area, but considered that the proposal would have a detrimental increase in density. No evidence was supplied in respect of the existing density of development in the area, nor what it would be with the proposed development. To this end, I find that this element of the reason for refusal is nothing more than an assertion.
9. In respect of these matters, I find that the Council have not provided sufficient evidence to substantiate their reason for refusal. Furthermore, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, given the scale of the proposal the development proposed should reasonably have been permitted. The refusal of planning permission therefore constituted unreasonable behaviour contrary to the guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
10. Turning to the delay in determining the application, the Council have explained that there was a change in case officer, and that there were complications arising from the need to provide mitigation for the Thames Basin Heath Special Protection Area (TBHSPA).
11. Whilst the lack of mitigation did not form part of the Council's reason for refusing the application, in my decision I found that the submitted agreement in relation to the mitigation was dated 28 February 2017 which is after the date of the Council's decision (20 December 2016). Consequently, I have found that this matter had not been adequately addressed by either party at the time of the Council's decision. As such, from the evidence before me, no unreasonable behaviour has occurred in respect of this matter.
12. Whilst the change in officer dealing with the application is regrettable, I am satisfied that any delay attributed to that does not amount to unreasonable behaviour.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to the reason for refusal of the application and therefore a partial award of costs is justified.

Costs Order

14. 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 Hart District Council shall pay to Kona Developments Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the reason for refusal of the application; such costs to be assessed in the Senior Courts Costs Office if not agreed.

15. The applicant is now invited to submit to Hart 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.

Chris Forrett

INSPECTOR