The Planning Inspectorate

Costs Decision

Site visit made on 18 April 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2019

Costs application in relation to Appeal Ref: APP/C1435/W/18/3209208
Olives Farm, Back Lane, Cross in Hand, Heathfield, TN21 0QG

- 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 & Mrs Tim Hugo for a full award of costs against Wealden District Council.
- The appeal was against the refusal of planning permission for No.2 residential dwellings, access, landscaping and associated infrastructure.

Decision

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

Reasons

2. The Planning Practice Guidance advises that 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 Council introduced a new reason for refusal in the course of the appeal. New evidence was submitted at the time of its appeal statement in relation to the effect of the proposal on the Ashdown Forest Special Area of Conservation (SAC). This was a consequence of a change in approach taken by the Council towards offsetting the impact of vehicle emissions associated with new residential development on the SAC, connected to developments in the evidence base associated with its emerging plan.

4. On the substantive planning issue, the planning appeal decision makes clear that the concerns put forward are credible and mean that, having regard to the requirements of the legislation relating to habitats sites, planning permission must not be granted for the development proposed. Whilst the Council had previously granted planning permission for similar residential development in close vicinity of the site, these decisions appear to predate the change in approach towards the SAC discussed above.

5. The Council advised the appellant of the issue by email in January 2019. Its actions in pursuing a High Court challenge to another appeal decision at Camberlot Stables appear to be consistent with this broad approach. Whilst undoubtedly frustrating for the appellant, the Council's actions were justified on this occasion by the requirements of legislation relating to habitats sites, as explained in detail in the planning appeal decision. Accordingly, it did not act unreasonably, either in terms of the appeal process or in relation to the substantive planning issues concerned.

6. Whilst the planning application was under the jurisdiction of the Council, a decision to grant planning permission for the proposal was subject to a successful legal challenge. In these circumstances there is a legitimate expectation that the planning committee would consider the planning issues associated with the proposed development afresh. In doing so, members are not obliged to follow the recommendations of officers. In its response to the appeal, the Council clearly substantiated its position in relation to the other planning issues associated with this development.

7. In conclusion, I cannot agree that the Authority has acted unreasonably in any aspect of this case. As such there can be no question that the Applicant was put to unnecessary or wasted expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated. For the reasons set out above neither a full or partial award of costs is justified.

Neil Holdsworth

INSPECTOR