
Costs Decision

Site visit made on 4 September 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th September 2019

Costs application in relation to Appeal Ref: APP/Y9507/W/19/3221909 The Grange, Farnham Road, Liss GU33 6JE

- 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 OAA Developments for a full award of costs against South Downs National Park Authority.
 - The appeal was against the refusal of an application for planning permission for development described as 'to create 7 new detached dwellings on the land known as Plot 4a'.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
4. The applicant's case in seeking an award for costs appears to be grounded in both substantive and procedural matters. Namely that the Council, in refusing planning permission, have acted unreasonably. In the applicant's view, the Council have not actively engaged with the applicant during the application process and refused planning permission for unjustified reasons that could have been overcome or conditioned.
5. Firstly, and not necessarily in order of importance, the applicant cites the suggestion of the Council to reduce the density of the proposed development which was originally proposed as seven dwellings. This followed concerns expressed by the Council's Arboricultural Officer that siting new dwellings close to protected trees could lead to future pressure to prune and/or remove them. In order to avoid areas around the protected trees, the applicant reduced the overall number of dwellings to five. The applicant is correct in then stating that

- the Council refused planning permission given that this, in number terms, would under deliver in the context of the Liss Neighbourhood Plan 2017.
6. On my reading of the Council's guidance on this matter, it seems to me that planning officers advised the applicant that, owing to the concerns expressed by both their landscape and arborocultural officers, the layout and potentially the density of the scheme will need to be revised. This appears to me to be an either/or situation and I have no compelling evidence before me to suggest that the Council have necessarily stated conclusively that reducing the number of dwellings is the only way to address the protected tree issue. I can only see, based on what is before me, that it was the applicant's decision to reduce the number of dwellings in a bid to address the concerns expressed. One could perhaps legitimately say that in a move to address one problem another may have been created but there seems to me to be limited evidence to suggest the Council necessarily insisted that the applicant reduce the number of dwellings.
 7. Amongst other things, the Council refused planning permission for reasons of harm to the character and appearance of the area. I accept this is a subjective opinion but then this is in part the role of the Council's planners to undertake. A given applicant may disagree but that is arguably par for the course in an appeal situation. It appears that the Council gave some guidance on their concerns in this regard following the end of the application's consultation process. It seems equally clear the applicant made a number of attempts to overcome that and whilst this approach is laudable, it seems to be the case that the changes were not sufficient to overcome concerns.
 8. I note the advice contained in paragraph 38 of the Framework in regard to Councils approaching decisions in a positive and creative way and working proactively. Be this as it may, this does not translate to the Council's view on a given development proposal always coming out as positive. Whilst not a statutory duty of a Council to do so, it seems they set out during the application's life, what their concerns were, giving the applicant an opportunity to address them. This is not a guarantee that whatever solution the applicant comes up with would be accepted. To my mind, the Council's actions in explaining the issues in a timely manner was behaving in a proactive way.
 9. In terms of the highway safety reason for refusal, the Council evidently disagreed with the view of their highways advisors who did not object to the appeal scheme on highway safety grounds. My conclusion on this matter as set out by my other decision aside, the applicant is of the view that this should not have been included as a reason for refusal.
 10. The Council's highways advisors are consultees in the planning application process. As such, it remains the role of planning officers to take on board their comments but they are not duty bound to agree with them. Having seen the evidence on this matter, it appears the Council were sufficiently clear on where they felt the visibility splays would be hindered on the ground whilst at the same time noting they could be achieved in theory, pending the outcome of a road safety audit which was required by a condition imposed on the extant planning permission for an access in the same place as was proposed as part of the appeal scheme. The Council also inferred, in reference to the extant planning permission, on how the inclusion of an access for a residential development may operate differently to one that accesses a field. I agree that the Council's evidence on this matter is light but nonetheless their position is

sufficiently clear. They do not offer detailed comment on the applicant's road safety audit and design for the proposed access but then again they were received at the final comments stage when the Council would not normally be commenting further.

11. The Council's reason for refusal concerning the Wealden Heaths Special Protection Area (SPA) was based around a lack of sufficient information to be able to be satisfied there would be no adverse effect thereon. It appears that the Council missed the applicant's evidence in this regard as at the time of the appeal they declared no intention to defend the reason for refusal. They made this statement at as early a stage as was possible in their appeal statement responding to the applicant's grounds of appeal. The applicant devotes five relatively brief paragraphs to this reason for refusal in their appeal statement, largely directing attention to the assessment work that the Council missed. This does not strike me as extensive work that required additional expenditure of any notable amount. In any case, it seems clear, given there were other issues of concern to the Council not affected by the SPA matter, that omission of the reason for refusal in the first instance would not have resulted in the outcome of the application being different.
12. Ultimately, the applicant considers that the work that they have had to undertake in responding to the Council's objections to the appeal scheme lead to wasted and unnecessary expense. Frustrating no doubt the outcome of the application was for the applicant as it was so despite attempt to resolve the Council's objections, I have not been able to find any areas in which the Council's behaviour has been either unreasonable or such that has lead to unnecessary or wasted expense. My own findings on the merits of the appeal scheme aside, their stance on the matters they refused planning permission for appear to me sound, based on planning grounds and sufficiently linked to relevant policies of the development plan. The applicant's view was that the appeal scheme accorded with the development plan and should have been approved. This was the applicant's view based on their assessment of the merits of the appeal. The Council's stance was, in essence, a disagreement of that. The result of this is the appeal that has been considered and little more.

Conclusion

13. With the above in mind, and overall, I find that the Council's actions have not been unreasonable or amounted to such that has caused the applicant to incur unnecessary or wasted expense. A claim for costs is not therefore justified. Accordingly, it is hereby refused.

John Morrison

INSPECTOR