



Costs Decision

Site visit made on 13 August 2019

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2019.

Costs application in relation to Appeal Ref: APP/R3650/W/19/3228152 Fairhaven, Ewhurst Road, Cranleigh GU6 7EB

- 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 R. Savage Esq. of Kingswear Properties Limited for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing detached house and outbuildings and construction of two new buildings creating 8 new dwellings.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The PPG also states that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, however, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
3. The appellant states that the Council took an unacceptable length of time to consider and determine the application and failed to deal with validation requirements properly. The appellant also states that the Council made extremely late requests for additional information.
4. Some of these concerns seem to also relate to a previous application on the site which the Council deemed invalid and the appellant subsequently withdrew. These concerns do not relate to the application or appeal before me and as such cannot be considered as part of this application for costs.
5. The appellant has suggested that the Council behaved unreasonably in not validating the application due to concerns around land ownership. However, the Council are required to ensure that due process has been followed and I do not consider they acted unreasonably in taking steps to satisfy themselves that the application was valid in this respect.
6. Following the validation of the application, a number of further delays appear to have occurred for a variety of reasons.

7. The Council sought further information around the interface between pedestrians using a footpath adjoining the site and the existing vehicular crossover. The appellant holds that this information was not necessary. Whilst I acknowledge that additional time appears to have been taken to explore these aspects of the scheme, the information gathered ensured that highway issues did not form part of the Council's reasons for refusal. Consequently, no further exploration of these matters during the appeal process appears to have occurred. Therefore, I have no evidence to suggest that any unnecessary or wasted expense was incurred during the appeal process as a result of this.
8. A late request was also made, following advice from the Surrey Wildlife Trust, for a bat scoping report. I recognise the appellant's disappointment that such a survey was not requested earlier following the acceptance of the biodiversity checklist at validation stage. The lack of a survey eventually became the Council's reason for refusing this application.
9. The Council has a duty to act appropriately following representations from consultees and ensure that protected species are not harmed as a result of any decisions taken. It therefore follows that the Council took the required steps to allow them to fully consider the potential effect of the development on a legally protected species.
10. Irrespective of the outcome of the application and the length of time taken for the Council to reach a decision, a bat survey would have been required prior to any works being undertaken. The appellant was given the opportunity to submit the required survey ahead of a decision being reached, thus potentially avoiding the need to appeal. This option was declined and the application was subsequently refused. Accordingly, I do not consider that the Council, in discharging its duties, has acted unreasonably in this regard.
11. I acknowledge the appellant's frustration that they considered initial discussions with the Council to be positive and believed that Council Officers were likely to recommend approval. However, informal discussion and advice given before an application is determined is given without prejudice and cannot pre-determine the final outcome of the application. Following a response from a consultee the Council was required to take the necessary steps in order to ensure the protection of a European Protected Species. I therefore have no firm basis to conclude that the actions of the Council amount to unreasonable behaviour.
12. Whilst I appreciate that the application was not determined as expeditiously as would have been ideal, I also find no substantive evidence that the appellant incurred any additional or wasted expense during the appeal process as a result of the length of time taken by the Council to reach a decision.
13. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

L J O'Brien

INSPECTOR