



Costs Decision

Site visit made on 19 November 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2020

Costs application in relation to Appeal Ref: APP/P2114/W/19/3234483 Isle of Wight Self Catering Ltd, Salterns Road, Seaview PO34 5AQ

- 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 Steve Catton (Seaview Self-Catering Holidays Limited) for a full award of costs against Isle of Wight Council.
 - The appeal was against the refusal of planning permission for the erection of 52 bungalows and chalets and the formation of a vehicular access, without complying with a condition attached to planning permission Ref TCP/5981/C, dated 4 October 1960.
 - The condition in dispute is No 2 which states that: 'The beach huts and holiday bungalows referred to herein shall only be occupied and used between 1st March and 31st October every year, unless the Council previously agreed in writing to the occupation of those buildings at other times of the year'.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ (the PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG² lists different types of behaviours which may give rise to a substantive award against local planning authorities.
3. The applicant considers that the Appropriate Assessment (AA) undertaken by the Council's Ecology Officer is unreasonable and unjustified, particularly in light of the consultation response provided by Natural England. It is also argued that the Council applied national planning policy incorrectly in respect of the mitigation hierarchy and on this basis, their decision to refuse the application was therefore erroneous.
4. Furthermore, the applicant considers that the Council behaved unreasonably, by issuing their decision despite the applicant's commitment to enter into the required planning obligation and agreement to the mitigation measures. Lastly, as there is an accepted management strategy and scheme for mitigating impacts in place, the applicant is questioning why the mitigation measures suggested by Natural England were dismissed by the Council.
5. However, whilst Natural England expressed support for some of the mitigation measures within their consultation response, the submitted information was

¹ Paragraph: 030 Reference ID: 16-030-20140306.

² Paragraph: 049 Reference ID: 16-049-20140306.

insufficient to enable them to determine the significance of the impacts which would result from the proposal, and the scope for mitigation. As detailed in my decision, I consider that the Council adequately followed the mitigation hierarchy, in accordance with national planning policy and guidance, and taking into consideration Natural England's advice. Having regard to the Case Officer's report and the Council's subsequent submissions, I find that the decision was appropriately substantiated.

6. The condition in place currently restricts the use of the site during the winter months, which is considered as a satisfactory avoidance strategy. Therefore, the removal of the condition would ineluctably lead to increased visitor numbers and activity at the site and it is on this basis that the Council refused the application, despite the mitigation measures proposed by the applicant.
7. I appreciate that the two reasons for refusal are to some extent interlinked. However, it is clear that the submission of a completed planning obligation to secure financial contributions towards the Solent Recreation Mitigation Strategy would have only addressed the Council's second reason for refusal and would not have overcome their concerns in respect of the effect of the proposal on the nature reserve. The Solent Recreation Mitigation Strategy cannot be relied upon to mitigate impacts alone, as it was set up to deliver a strategic approach to mitigating impacts within the Solent and Southampton Water Special Protection Area as a whole, rather than the adjacent nature reserve. Consequently, even if the determination period had been extended to enable the applicant to submit a planning obligation, the appeal could not have been avoided altogether.
8. I therefore find that unreasonable behaviour or wasted expense, as described in the PPG, has not been established. On this basis, I conclude that an award of costs is not justified.

S Edwards

INSPECTOR