



Costs Decision

Site visit not undertaken

by S M Holden BSc MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2020

Costs application in relation to Appeal Ref: APP/R3650/W/19/3241467 Westbrook Mills, Borough Road, Godalming GU7 2AZ

- 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 J Petterson of Stonegate Land and Estates for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for a change of use to provide 128 units following the grant of Planning Permission under Application CR2018/011. Extensions to provide a new roof design and alterations to provide a new façade treatment, new doors, new window, and provision of additional parking, bin and cycle stores.
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Decision

1. The application for costs is refused.

Reasons

2. The 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 or wasted expense in the appeal process.
3. The appellant's claim for costs centres on the manner in which the Council consulted with Surrey Wildlife Trust in relation to the presence of bats on the site. He considers that as a consequence, development which should have been permitted has been unacceptably delayed.
4. It seems to me that the consultation with the Surrey Wildlife Trust (SWT) in respect of the application should be seen in the broader context of knowledge about the presence of protected species on the site. The appellant was well aware from the earlier Ecological Impact Assessment undertaken by his own consultant, Simlaw Ecology, that bats were roosting in one of the buildings. The report stated that the assessment was time limited. By submitting the current application in May 2019, he would have been aware that updated surveys were likely to be required and that the best time to undertake these was during the summer months.
5. However, alongside this the parties were awaiting the outcome of the appeal relating to a similar application on the site, WA/2018/1524. The appellant did not wish the current application to be determined in advance of that decision¹. When it was received in mid-September the appellant was also aware of the

¹ APP/R3650/W/19/3223641

need to progress the legal agreement which would secure the provision of the affordable housing and contribution towards a SANG, both of which the Inspector had found to be necessary. It was only then that chasing responses to consultation in respect of the current proposal became more pressing in order to move towards a determination. The Council acted accordingly and SWT advised that as the surveys referred to in the Ecological Impact Assessment were time expired, updated ones were required. While this response could have been provided sooner, it could not have been a surprise to the appellant.

6. The subsequently rushed and rather inadequate repeat surveys, which failed to satisfy the SWT when reconsulted, cannot be attributed to unreasonable behaviour by the Council. On the contrary, the situation could have been avoided by the appellant undertaking the additional surveys at an earlier and more suitable time.
7. The appellant did not submit any additional information with the appeal to address the shortcomings of the later surveys. As it will be seen from my decision, I was not satisfied that the lack of information could be addressed by imposing a condition requiring additional surveys, due to the high level of legal protection that pertains to bats.
8. I therefore conclude that the Council did not act unreasonably or delay development that should have been allowed. Neither have I found that the appellant has incurred additional or wasted expense during the appeal process. It therefore follows that no award of costs is justified.

Sheila Holden

INSPECTOR