
Costs Decision

Hearing Held on 28 January 2020

Site visit made on 28 January 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2020

Costs application in relation to Appeal Ref: APP/C1760/W/19/3233403 Land formerly part of Longparish House Estate, South of Upper Mill, Mill House Lane, Longparish SP11 6QL

- 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 Anthony Buckingham for a [partial] [full] award of costs against Test Valley Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing Fishing Hut and the erection of a replacement Hut.
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Decision

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

The submissions for Mr Anthony Buckingham

2. In relation to procedural matters, the appellant claims that all necessary information to understand the proposal was submitted with the application, that additional information and plans were provided on request from the Council but that continued dialogue on later concerns raised by the Council was precluded by determination of the application.
3. In respect of substantive issues, the appellant asserts that the Council has sought to prevent or delay development which should clearly have been permitted as it accords with the development plan, the National Planning Policy Framework and other material considerations. As such the appeal could have been avoided and there has been wasted and unnecessary expense through the appointment of professional persons to research, prepare and submit the appeal statement.

The response by Test Valley Borough Council

4. The Council refers to contradictory and unclear information in the application, for example whether there would be a toilet in the proposed hut. It is acknowledged that the issue of Nutrient Neutrality was raised late in the application process, but it is claimed that the Council only became aware of the issue at that time. It is contended that it was reasonable to refuse the application in a timely manner as there were concerns additional to this late issue. Moreover, that the reasons for refusal were clear, precise and justified by reference to relevant planning policies and that the issues raised could not be dealt with by planning conditions.

Reasons

5. Parties in planning appeals normally meet their own expenses. However, 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.
6. In respect of completeness of the original planning application it is evident from the submission of the parties that there was confusion on whether there would be toilet facilities. Their inclusion in the proposal was only confirmed at a late stage. The application was presented in the Planning Statement as a fairly straight-forward replacement of a fishing hut, but the inclusion of toilets and wash facilities was a significant change. Given the location of the site within a Site of Special Scientific Interest (SSSI) there would be the need to examine how wastewater would be handled.
7. The changes to the design and materials for the replacement building confirm that the Council did enter dialogue with the applicant during the early stages of the application. However, by early July 2019 the Council resolved to close further dialogue although the applicant was keen to continue this. As the Council's concerns following a case review related to issues of principle over the size of the replacement hut, the submission of additional information would only have delayed the decision they had resolved to take. I acknowledge the appellant's frustration at this turn of events, but the position on all relevant issues is not always apparent at the early stages of considering a planning application. Councils are charged with determining applications in a timely manner. The applicant had not made a pre-application submission that could have revealed concerns relating to size and design prior to formal submission.
8. The issue of Nutrient Neutrality was raised late in the application process, but Natural England's key document on this matter was only issued in June 2019¹. As the Council adopted the precautionary approach advocated by Natural England this formed the third reason for refusal of the application. Although the proposal is small in scale, in my judgement its impact on Nutrient Neutrality is a relevant consideration and would not necessarily be 'de minimis'. There was not sufficient information in the proposal to make a positive assessment. This was not a matter that could have been left to a planning condition; the impact on nature conservation interests is an issue of principle and without additional information it could not be resolved that the impact would be acceptable.
9. It will be apparent from the main decision that I consider that the proposal is not one that should clearly have been permitted given outstanding conflict with relevant planning policies.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Rory MacLeod

INSPECTOR

¹ Natural England Advice for Local Planning Authorities on Achieving Nutrient Neutrality for new development in the Solent Region (June 2019)