The Planning Inspectorate

Costs Decision

Site visit made on 20 July 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 October 2020

Costs application in relation to Appeal Ref: APP/B1740/W/20/3248381
9 Hurst Road, Milford-on-Sea SO41 0PY

- 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 OPM (Bournemouth) Ltd for a partial award of costs against New Forest District Council.
- The appeal was against the refusal of planning permission to erect a single storey bungalow.

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 expense in the appeal process.

3. The application is for a partial award of costs. In essence, the applicant considers that it was not necessary to conduct a speed survey and that the Council did not properly advise the applicant about the need to mitigate impacts of the development on the New Forest and Solent Coast European Sites (the European Sites), so this matter remains unresolved in the appeal.

Speed survey

4. I appreciate that the applicant disagrees with the Highway Authority's (HA) request for a speed survey and its advice to the Council regarding the proposed visibility splay. However, as submitted to the Council, the appeal application contained no speed survey or other objective evidence to substantiate reduced visibility at the proposed access. Notwithstanding that the development was for a single dwelling and turning on-site would allow vehicles to exit in a forward gear, the HA expressed the concerns that it did given that the required visibility splay could not be achieved.

5. Accordingly, it was for the applicant to demonstrate that visibility would not harm highway safety, including whether this was a 'lightly trafficked and slow speed' situation. The speed survey was commissioned of the applicant's own volition, not at the request of the Council, to try and avert a potential highways reason for refusal (not an unusual scenario) and before the applicant had asked the Council to clarify any other concerns with the development.

6. The applicant agreed to extensions of time afforded by the Council to enable the speed survey to be undertaken and submitted. That the applicant decided to repeat the survey due to an error in the original survey was no fault of the Council's and any delay by the HA in facilitating the speed survey is not the responsibility of the Council. The speed survey was not received by the Council until 26 November 2019 and the HA comments on it followed shortly after, dated 11 December 2019, maintaining a visibility objection. The Council's decision notice is dated 23 December 2019.

7. On the evidence before me, I find that it was not disproportionate or unwarranted for the HA to refer to a speed survey and as a matter of planning judgement, it was clearly material to the Council's consideration of visibility at the proposed access. Nor did the Council cause delay in the determination of the appeal application. The applicant did not engage a highway consultant to address the HA objection prior to the Council's decision and has instead pursued the matter at appeal. Parties in planning appeals normally meet their own expenses.

European Sites

8. Further to a letter (or email) from the Council dated 2 October 2019 the applicant had agreed to Grampian planning conditions to mitigate the impact of the development on the European Sites, having regard to increased recreational use and to additional overnight accommodation on nitrate/nitrogen levels. By then, extensions of time were already in place for the speed survey and the Council advanced the appeal application to a decision soon after the 11 December 2019.

9. After the Council's decision, the applicant emailed the Council on 8 January 2020 about the 'Nitrates issue' and, in this regard, a 'section 106 Unilateral Planning Obligation'. There is no evidence before me that the Council responded to this particular request, but also no evidence that the applicant thereafter pursued this matter with the Council. Because there was no relevant reason for refusal with regard to the European Sites, the applicant 'assumed' that the development was of 'such a small scale' that there 'would not be a significant impact'. However, the absence of a reason for refusal was unsurprising because when it made its decision the Council considered mitigation could be achieved by Grampian conditions; but, with regard to increased recreational use the Council had, since its decision, adopted a different procedure which requires a planning obligation (not a Grampian condition) and, on the evidence before me, informed the applicant about this.

10. There is no evidence before me to suggest that the applicant sought to resolve its position on the European Sites until after the benefit of the Council's statement of case. This reasonably included the Council's up-to-date position on the European Sites. The applicant considered that if a Grampian condition was acceptable to the Council to mitigate impact of the additional overnight accommodation on the European Sites, having regard to nitrate/nitrogen levels, then a Grampian condition should also still be suitable to mitigate impact of increased recreational use of the European Sites, though provided no substantive evidence in this regard.

11. On the evidence before me I find that the applicant's agreement to Grampian planning conditions did not cause unnecessary costs or delay. Furthermore, planning appeals are determined having regard to material considerations in

place at the time of the Inspector's decision. While there has been a change in the Council's position, it has not introduced new evidence at a late stage and, though it seems that there may have been some misunderstanding, it is nonetheless the responsibility of the main parties to ensure that their appeal case is inclusive and up-to-date, including when the appeal is lodged — in this case, having regard to the Council's current policies and mitigation strategies for the European Sites.

Conclusion

12. For the reasons given, I find that unreasonable behaviour by the Council resulting in unnecessary expense during the appeal process, as described in the PPG, has not been demonstrated and that a partial award of costs is not therefore justified.

Robin Buchanan

INSPECTOR