



Costs Decision

Site visit made on 6 October 2020

by Martin Small BA (Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2020

Costs application in relation to Appeal Ref: APP/R3650/W/20/3253713 Plot 3, Springfield, 30 Frensham Vale, Lower Bourne, Farnham, GU10 3HT

- 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 & Mrs C Abrahams for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for the erection of detached dwelling with associated drive and parking.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. This application for a full award of costs has been made following the refusal of planning permission by the Council for the erection of a detached dwelling with associated drive and parking on the appeal site. The Planning Practice Guidance sets out the circumstances in which costs may be awarded in the appeal process.
3. Planning permission was refused for the reason that it had not been sufficiently demonstrated that safe access and egress to and from the site could be achieved during flood conditions. The applicants' case for the award of costs is that the application was accompanied by a robust Flood Risk Assessment (FRA) which specifically addressed access and was accepted by the Environment Agency; that previous applications for dwellings on Plots 1 and 2 at the property were not refused on the basis of a safe access and were subsequently allowed on appeal¹; and that the Planning Officer's recommendation to grant permission was overturned by the Western Planning Committee solely on the basis of evidence provided by third parties. The appellants contend that in the absence of any other evidence to counter or outweigh the FRA, the Council has behaved unreasonably and that that behaviour has caused considerable and unnecessary expense in pursuing the appeal.
4. The Council accepts that the appeal site is within Flood Zone 1 but access to wider areas (i.e. along Frensham Vale) would pass through Flood Zones 2 and 3. It contends that it is for the Council to consider whether safe access and egress to the site could be provided beyond these areas to Flood Zone 1 by considering the flood hazard rating of potential flood waters and that it was not unreasonable for the Committee Members to have a different view than that of the Planning Officer.

^{1 1} APP/R3650/W/19/3240797 and APP/R3650/W/19/3240800

5. I accept the Council's arguments insofar as they go. The FRA does not address the matter of access along Frensham Vale. However, the fact remains that, from the evidence before me, the Council has not previously raised the safety of access along Frensham Vale as an issue when considering the previous planning applications for Plots 1 and 2, even though it had third party evidence on this matter before it. The Council has not advised me of any new or additional evidence with the application the subject of this appeal that has led it to now consider flooding on Frensham Vale to warrant the refusal of the application.
6. The Planning Practice Guidance specifically identifies not determining similar cases in a consistent manner as an example of unreasonable behaviour which may give rise to a substantive award of costs. As the sole reason for refusal and with the Planning Officer's conclusions on other matters, it is reasonable for me to conclude that had the planning application not been refused on the matter of safe access along Frensham Vale, planning permission would have been granted. Consequently, the Council's behaviour has necessitated the lodging of the appeal that would otherwise have been unnecessary.

Conclusion

7. I consider that the Council has behaved unreasonably in not determining the application the subject of this appeal in a manner consistent with its determination of the similar applications for Plots 1 and 2. This behaviour has directly caused the applicant to incur unnecessary and wasted expense in the appeal process and merits a substantive award of costs.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Waverley Borough Council should pay to Mr & Mrs C Abrahams the costs of the appeal proceedings described in the heading of this decision.
9. The applicants are now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Martin Small

INSPECTOR