
Costs Decision

Site visit made on 15 March 2021

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 9 April 2021

Costs application in relation to Appeal Ref: APP/Y3940/W/20/3254020 Land adjacent to Moor Cottage, Moor Hill, Fovant, Wiltshire SP3 5LB

- 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 Eugene Patel for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for a pair of semi-detached houses.
-

Decision

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

Reasons

2. I have considered this application for costs in the light of the Government's Planning Practice Guidance (PPG). This advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority are required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹.
3. The costs application in this case relates to a second reason for refusal that was introduced by the Council after the Council's original determination of the application. This second reason for refusal was predicated, in essence, on advice given by Natural England that mitigation measures relating to phosphate pollution in the River Avon Special Area of Conservation (SAC) contained within the River Avon SAC – Phosphate Neutral Development Plan Interim Delivery Plan were out of date and therefore there was uncertainty as to whether the mechanisms that the Council had in place to mitigate the effect of phosphates was effective.
4. This would have meant that, applying the precautionary principle, the Competent Authority undertaking the appeal (the Inspector) would have had to undertake an Appropriate Assessment in line with the Conservation of Habitats and Species Regulations 2017. Without this any decision could have been unlawful. It was therefore incumbent upon the Council to let the Inspector have this information.

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

5. It was perhaps unusual that the Council chose to impart this information in the form of a second reason for refusal but I am not persuaded that this was necessarily unreasonable, as the Inspector would have had to effectively introduce this reason in any case, and contact the appellant for his views accordingly. I note that the information from Natural England was received one day before the Council's determination of the planning application but do not consider this to be particularly pertinent, as presumably had the council had more time the second reason for refusal would have been included in the decision notice. Furthermore, whilst the proposed development was minor, it was nonetheless for an extra dwelling, and consequently to my mind the Council were within their rights to act.

Conclusion

6. I therefore conclude, whilst accepting that the circumstances surrounding this case are unusual, that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated, and an award of costs is not justified.

John Wilde

Inspector