Costs Decision

Site visit made on 19 October 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Costs application in relation to Appeal Ref: APP/N1730/W/21/3275624
Land to the north of Moorhen Close, Blackwater, Camberley GU17 0SA

- 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 Hart District Council for a full award of costs against Assets Management Group Ltd.
- The appeal was against the refusal of planning permission for the change of use to residential and the erection of a 4 bedroom detached house with habitable loft space, integral garages and associated access off Moorhen Close.

Decision

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

Reasons

2. 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 expense in the appeal process.

3. The Council points to an omission of documentation with the appellants' appeal submission. They also contend that the appellants failed to produce any clear evidence to substantiate their case in relation to any of the six refusal reasons and therefore, the appeal was pursued without prospect of success. Finally, they assert that the appellants made untrue statements regarding the Flood Zone in which the appeal site is located.

4. PPG gives examples of behaviour where appellants will be at risk of an award being made. This includes a delay in providing information or failure to adhere to deadlines, providing information that is shown to be manifestly inaccurate or untrue and where the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.

5. I had sight of the documents referenced in section 7 of the appellants' statement of case, including the correspondence dated 7 April 2021 regarding the access. In addition, the Preliminary Ecological Appraisal prepared by David Archer Associates, May 2021 was submitted as part of the appeal documentation and it will be seen that I have referred to it in my decision.

6. On the basis of the information before me it is not clearly shown that the appellant delayed in providing information or otherwise failed to adhere to deadlines as part of the appeal process.

7. The appellants submitted an appeal statement that attempted to address the six reasons for refusal on the decision notice. The statement systematically addresses the issues raised and in relation to the principle of the development points to material considerations which they consider should outweigh the development plan. Although I ultimately concluded otherwise, a notable component of the appellants' case was that the proposal for a self build dwelling accorded with government policy contained in a speech made by the Prime Minister.

8. In relation to the matters of flood risk, Habitats Regulations Assessment, biodiversity and trees the appellants provided detailed substantive evidence prepared by reasonably competent consultants which they considered addressed the Council's concerns. Notwithstanding that I found them to be insufficiently certain to address the impact on the Special Protection Area as part of an Appropriate Assessment, the appellants did outline some mitigation measures relating to Suitable Alternative Natural Greenspace. Furthermore, as will be seen from my decision, I accepted the appellants' position in relation to the access concerns raised by the Council.

9. Taking these factors together, the appellants provided an adequately plausible appeal case and was seeking to test the Council's judgement at appeal. Consequently, I do not find that this amounts to unreasonable behaviour.

10. The description of the appeal site as being in Flood Zone 1 in the appellants' Statement of Case is prefaced by reference to the Flood Risk Assessment[1] provided. This document, produced by a professional consultant, expressly refers to the Environment Agency flood maps and states[2] the site is located in Flood Zones 3, 2 and 1. It goes on to refer to modelling undertaken in relation to residential development nearby in order to draw parallels with the appeal site. It is on that basis that I understand the conclusion to be that the degree of flood risk at the appeal site would be equivalent to Flood Zone 1, and this is the position advanced by the appellant. Whilst I was not persuaded by the argument, it does not represent an example of providing information that is shown to be manifestly inaccurate or untrue.

11. Therefore, overall, I do not consider that unreasonable behaviour has been demonstrated within the meaning of the PPG. As I am not persuaded that the appellants have acted unreasonably in this case, it follows that the Council was not put to unnecessary or wasted expense in defending their decision at appeal.

Conclusion

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

Helen O'Connor

Inspector

[1] Prepared by Unda Consulting Limited dated January 2021
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