Costs Decision

Site visit made on 24 January 2023

by Jonathon Parsons MSc BSc DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2023

Costs application in relation to Appeal Ref: APP/C1435/W/22/3292454
Land adjoining Mill Lane, Lewes Road, Cross in Hand, Heathfield TN21 0TA

- 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 Leach Projects Ltd for a full award of costs against Wealden District Council.
- The appeal was against the refusal of planning permission for the erection of 1no. detached three-bedroom bungalow with associated access, car parking and landscaping.

Decision

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

Reasons

2. The Planning Practice Guidance 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.

3. The appeal has been dismissed and therefore, the Council has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It is indicated that the Council offered advice during the application determination process that the principle of a new dwelling was acceptable. However, even if this was the case, this positive steer should not have appeared clearcut because there were heritage and highway matters still to be considered.

4. The applicant was not aware of the Council's ecology objection, relating to Hazel Dormouse, as a Protected Species, until the decision notice on the proposal was issued. Such an approach is not in the best interests of embracing a positive and pro-active approach in dealing with development proposals. It has also not provided a ecological consultee view to back up its objection. However, the Council has substantiated its reason for refusal by identifying survey need based on a local record and previous requirements in applications in the area. Whilst I have agreed with the applicant in not requiring a survey, the Council has substantiated its reason for refusal and the Council's stance inevitably involves subjectivity in interpreting the facts.

5. Furthermore, the PPG details that costs cannot be claimed for the period during the determination of the application although events during this period can determine whether costs can be claimed for the appeal process. Specifically,

the PPG[1] states costs can only be awarded in relation to unnecessary or wasted expense at the appeal but that behaviour and the actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded (during the appeal process). In this case, for the reasons indicated, the Council has substantiated its reason for refusal.

6. Addressing the Council's ecological reason for refusal through a planning condition would not have been acceptable. Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before consent is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Such surveys should only be conditioned in exceptional circumstances.

7. In terms of consistency of approach with other development proposals, the applicant has referred to developments granted at the Roundhouse, and the Saddlery and the retail/distribution building on Mill Lane. However, the Council has assessed these proposals providing evidence and explanation as to why these proposals are different to the appeal proposal. Whilst the applicant may disagree, the Council is entitled to its opinion if, as it has done so, it has substantiated its opinion with evidence.

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Jonathon Parsons

INSPECTOR

[1] Section Appeals paragraph 033 Reference ID: 16-033-20140306