



Costs Decision

Site visit made on 18 April 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2024

Costs application in relation to Appeal Ref: APP/R3650/W/23/3328470 Frensham Meadow, Bacon Lane, Frensham, Surrey, GU10 2QB

- 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 Shubbrook and Mrs Hanly for a partial award of costs against Waverley Borough Council.
- The appeal was against the refusal of planning permission for change of use/conversion of equestrian building together with alterations to form an independent self-contained dwelling.

Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 or wasted expense in the appeal process. The applicants consider that the Council behaved unreasonably through failure to produce evidence to substantiate its third reason for refusal, which related to the effects of the proposal on nearby designated Habitat Sites, and which in turn caused the applicants to incur unnecessary expense.
3. The PPG states that the failure to produce evidence to substantiate each reason for refusal on appeal is an example of unreasonable behaviour which may give rise to a substantive award of costs against a local planning authority. Other examples include giving vague, generalised or inaccurate assertions about a proposal's impact, which was unsupported by any objective analysis. The PPG also refers to the role of statutory consultees and states that, where a local planning authority has relied on the advice of a statutory consultee in refusing an application, there is a clear expectation that the consultee in question will substantiate its advice at any appeal.
4. The Council relied upon the comments of Natural England, who raised objection to the proposal. The email chain makes clear that that consultee, and indeed the Council, had sight of the applicants' Habitats Regulations Screening Statement as well as an associated legal opinion regarding this matter. Those documents highlighted the approach taken by the Council as part of the Habitats Regulations Assessment (HRA) associated with Part 1 and Part 2 of the Local Plan.
5. Despite that evidence, a different approach was taken by the Council and Natural England, without any substantive evidence or reasoning, either as part

of the application or the appeal, as to why such a change was now necessary. While there may have been increased pressure for housing in general terms, it is not clear how this has affected areas close to the Habitat Sites, which was acknowledged within the Council's 2016 HRA as having a lower likelihood of anything other than small quantities of further residential development coming forward in the 400m zone.

6. On this basis, and in the absence of evidence to the contrary, the Council displayed unreasonable behaviour through its failure to substantiate its third reason for refusal. This took place despite having obtained its own legal advice in 2021, which concluded that unless Natural England provided further explanation or evidence in support of their position, the Council would not be able to provide evidence in support of such a reason for refusal.
7. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the third reason for refusal, and a partial award of costs is therefore warranted.

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 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Waverley Borough Council shall pay to Mr Shubrook and Mrs Hanly the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Waverley Borough 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.

C Shearing

INSPECTOR