

APPENDIX F

WAVERLEY BOROUGH COUNCIL

EXECUTIVE - 19 MAY 2009

Title:

2 SHORTHEATH ROAD, FARNHAM – PLANNING APPEAL DECISION AND COSTS APPLICATION

[Portfolio Holder (for 2008/09): Cllr Mrs Carole Cockburn]

[Portfolio Holder (for 2009/10): Cllr Ms Denise Le Gal]

[Wards Affected: Farnham Shortheath and Boundstone]

Summary and purpose:

This report details the decision of the Planning Inspector regarding the appeal against Waverley's refusal of planning application WA/2008/0664 at 2 Shortheath Road, Farnham; and in particular the decision to award partial costs against the Council. Approval of a Supplementary Estimate is sought together with authority to make payment of the costs determined.

How this report relates to the Council's Corporate Priorities:

The decision of the Planning Inspector in awarding planning permission was contrary to the view of Waverley's Western Area Planning Committee and therefore may be regarded as detrimental to the local area. The award of partial costs against the Council will result in less money being available to deliver the Council's Corporate Priorities.

Equality and Diversity Implications:

This report does not have any equality and diversity implications.

Resource/Value for Money implications:

The decision of the Inspector to award partial costs against the Council clearly has a financial implication as detailed in the report. There is no budget provision to cover these costs and therefore it is necessary to seek approval of a supplementary estimate.

Legal Implications:

The Council is required to comply with the decision of the Inspector including the partial award of costs.

Introduction

WA/2008/0664

Planning Application for the demolition of the existing house, retention of the coach house and the erection of a block of ten flats.

1. The planning application for the above development was determined by the Area Planning Committee (Western) in August 2008. The Officer recommendation was that permission be granted subject to compliance with the SPA 106 Agreement and subject to conditions. The Committee, however, disagreed and resolved to refuse permission for the following reasons:-
 1. The proposal by reason of its scale and extent of car parking would be out of keeping with and detrimental to the visual character and distinctiveness of the area in conflict with Policies SE4 of the Surrey Structure Plan 2004 and Policies D1 and D4 of the Waverley Borough Local plan 2002.
 2. The proposed development, by reason of increased activity and associated noise and light disturbance, would be detrimental to the amenity of surrounding residential properties in conflict with Policy D1 of the Waverly Borough Local Plan 2002.
 3. The Local Planning Authority in the light of available information and the representations of Natural England, considers that the proposals (in combination with other projects) would have an adverse effect on the integrity of the Thames Basin Heaths Special Protection Area (SPA). It is likely that this proposal would have an adverse effect on the integrity of the SPA in that it is now widely recognised that increasing urbanisation of the area around the SPA has a continuing adverse effect on the interests features, namely nightjar, woodlark and Dartford warbler, the three internationally rare bird species for which it is classified. Accordingly, since the Local Planning Authority is not satisfied that Regulation 49 of the Conservation (Natural Habitats etc) Regulations 1994 applies in this case it must refuse permission in accordance with regulation 48(5) of the 1994 Regulations and Article 6 (3) of the Directive 92/43/EEC. For the same reasons, the proposal conflicts with policy SE7 of the Surrey Structure plan 2004 and PPS 9.
2. The applicants lodged an appeal against this decision that was heard at a local Inquiry on 6 and 7 January 2009. The Inspector in his decision letter dated 5th February 2009 allowed the appeal and granted planning permission.
3. At the Inquiry, two costs applications were made by the appellants. One was for a partial award of costs and one for a full award. The Inspector refused the application for a full award of costs but granted the application for a partial award.

Costs application

4. The application for a partial award was made on the basis of the withdrawal of Reason 2 at the start of the Inquiry.

5. The appellants submitted that an award of costs can be made where a witness has attended an Inquiry unnecessarily. The risk of costs can be minimised if the planning authority advises, immediately, that a reason for refusal is not being pursued. In this case, however, the reason was withdrawn at the start of the Inquiry which could not be later. It is a requirement to produce evidence to support each reason for refusal but none was submitted with regard to reason 2. It was noted that the advice of officers does not have to be adopted but that a planning authority must have reasonable grounds for taking a decision contrary to such advice. The appellants submitted that no such grounds were available.
6. It was also submitted by the appellants that the imposition of planning conditions was not considered and it appeared consultation with the Environmental Health Officer was ignored. The Committee did not seek technical backup with regard to reason for refusal number 2 either before or after the meeting but had ample time to do so.
7. In consequence of this approach by the planning authority, it was submitted, that the appellant instructed 3 witnesses and submitted appropriate evidence. Costs were incurred in challenging reason number 2.

Planning authority response

8. It was pointed out on behalf of the planning authority that Councillors considered that they had strong grounds for refusing the application for reason 2. Evidence on those matters was provided in paragraphs 7.13 to 7.17 of the Council's proof of evidence so it was not a matter of no evidence being produced.

Inspector's decision

9. The Inspector found that the planning authority did not notify interested parties that it would not be pursuing reason 2 until the start of the inquiry, however, the appellant had employed 3 witnesses who each produced evidence with regard to this reason for refusal which as a consequence of the council's actions was not considered at the Inquiry. It was clear from the evidence that was submitted by the 3 witnesses, that they had undertaken a considerable amount of work in preparing for the Inquiry. In the Inspector's opinion unreasonable behaviour resulting in unnecessary expense had been demonstrated by the late withdrawal of reason 2 and therefore he considered a partial award of costs was justified.
10. The formal decision of the Inspector was:-

"In exercise of my powers under section 250(5) of the Local Government Act 1972 and the Schedule 6 of the Town and Country Planning act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Waverley Borough Council shall pay to Spiritform, the costs of the appeal proceedings, limited to those costs incurred in respect of challenging the

Council's second reason for refusal, such costs to be assessed in the Supreme Court Costs Office if not agreed.....”

The Amount of Costs

11. The appellants have submitted a claim for costs in the sum of £55,701.15. This figure is now being scrutinised with a view to achieving a negotiated settlement. It is expected that the outcome will be a figure in the region of £40,000 to £50,000.

Conclusion

12. Waverley does not budget for potential award of costs against the Council. It will therefore be necessary for a supplementary estimate to be approved to cover this expenditure. In the past the Council has regarded such expenditure as an appropriate use of balances, which are sufficient to cover the amount required. Waverley's overall Budget position will be reviewed during July 2009, with a report being presented to the Executive in September.

Recommendation

The Executive is requested to recommend to Council that:

1. a Supplementary Estimate of up to £50,000 be approved to cover the partial award of costs against the Council arising from Planning Application WA/2008/0664; and
2. the Chief Executive be authorised to make final settlement of the amount due on behalf of the Council within the figure at Recommendation 1.

Background Papers (CSP)

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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