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## Costs Decisions

Site visit made on 3 July 2017

by **Richard Aston BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28<sup>th</sup> July 2017

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### **Costs applications in relation to Appeal Ref: APP/B9506/W/17/3171773 Cotton Cool, Forest Lane, Hightown Hill BH24 3HF**

- 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).
  - Application A is made by Mr and Mrs Walker for a full award of costs against New Forest National Park Authority.
  - Application B is made by New Forest National Park Authority for a partial award of costs against Mr and Mrs Walker.
  - The appeal was against the refusal of planning permission for replacement dwelling.
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### **Decisions**

#### **Application A**

1. The application for a full award of costs is refused.

#### **Application B**

2. The application for a partial award of costs is refused.

### **Reasons**

3. The 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. Importantly, it encourages local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay.

#### *Application A*

4. The applicant contends that the Council attached little or no weight to the fall-back position as a material consideration. However, on my reading of the delegated officer report it is clear that the Council correctly identified that the certificate of lawfulness granted in 2015 was a fall-back position and as such was a material consideration.
5. Because the Council concluded that the increase in height of the appeal scheme would bear no resemblance to the original core of the dwelling the fall-back was not sufficient to 'override well-supported policy'. The weight to be attached to other such considerations is a matter for the decision maker. Although I have taken a different view in relation to whether this indicates that a decision should be made other than in accordance with the development plan, I do not

consider that the failure to refer to any particular weight is determinative. In this respect it has not been demonstrated to me that the actions of the Council amounted to unreasonable behaviour.

6. The use of conditions to require mitigation measures for protected species should only be considered in exceptional circumstances. In my view, it is an inappropriate course of action in a case that has reasonable likelihood of a protected species being present as is the case here from the findings of an initial Phase 1 bat survey. Moreover, given such findings the Council reasonably considered that additional survey work and details of mitigation were required before planning permission could be granted. The appellant was clear as to the Council's concerns and given their conclusions on this matter, which I am satisfied were properly reached, this is a matter which could only have been resolved at appeal.
7. Therefore, I find that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated in the evidence before me. For this reason an award of costs is not justified.

#### *Application B*

8. The Council's application relates to the submission of late evidence and the work carried out by the Council to amplify and substantiate reason for refusal 2. The Council contend that the appellant has never informed them of the intention to carry out the survey, even though it was requested in January 2017. The Council also consider that the appellant had sufficient time to carry out the surveys and then submit their appeal but did not do so.
9. Whilst it is unfortunate that this survey could not have been carried out before the appeal was submitted, the timing of the submission of the appeal is not indicative of unreasonable behaviour given the restricted timings of such surveys. The appellant also points out that it was considered the Phase 1 bat survey contained sufficient mitigation and it was clear that the use of a condition was a central plank of their case but there also appeared to have been an intention to respond to this issue as set out in correspondence during the determination period<sup>1</sup>.
10. The Council's decision to include the second reason for refusal was entirely their choice albeit somewhat forced by the incompatibility of certain deadlines but given the nature of the dispute between the parties concerning the use of a condition, an appeal was inevitable. Although I have reached an alternative view in relation to the use of such a condition, the suitability of this approach is entirely a matter for the decision maker and contending it should be used does not amount to unreasonable behaviour.
11. Therefore, I find that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated in the evidence before me. For this reason a partial award of costs is not justified.

*Richard Aston*

INSPECTOR

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<sup>1</sup> Email from Agent to Council dated 11 January 2017 and letter dated 12 January 2017.