



## Costs Decision

Site visit made on 17 November 2020

**by J Ayres BA Hons, Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 21<sup>st</sup> January 2021**

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### **Costs application in relation to Appeal Ref: W/40001471 88 Salvington Hill, High Salvington, Worthing BN13 3BD**

- 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 Mrs S Simpson for a full award of costs against Worthing Borough Council.
  - The appeal was against the refusal of planning permission for two bedroom chalet bungalow and provision of new vehicular crossover.
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### **Decision**

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

### **Reasons**

2. The National Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense.
3. The PPG makes it clear that a local planning authority is at risk of an award for costs if it prevents or delays development which should be permitted having regard to its accordance with the development plan; fails to produce evidence to substantiate its reasons for refusal on appeal; or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. The reason for refusal asserts that the proposal would have an unacceptable impact on the local environment and biodiversity to the detriment of the character and visual amenities of the area.
5. Whilst the effect of a proposal on the character of an area is, to some degree, subjective, the effect on biodiversity should be assessed through the proper evaluation of relevant evidence. In this case the Council officers advised that the proposal would provide a suitable environment for local wildlife, and that these matters could be adequately addressed by way of condition. Very little evidence was put forward to establish that the site currently provides a habitat for local wildlife, that the removal of the leylandii cypress hedge, which is not subject to a Tree Preservation Order, would result in a loss of habitat, or that the proposed new planting would fail to provide an adequate habitat for wildlife.

6. The evidence demonstrates that assertions were made in relation to the Council's Planning and Climate Change Interim Checklist. However at the time of consideration of the proposal the Planning and Climate Change Interim Checklist was in draft form and no evidence has been put to me that it formed part of the adopted development plan such to be attached any particular weight in determining the proposal.
7. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy, and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

### **Costs Order**

9. 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 Worthing Borough Council shall pay to Mrs S Simpson, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Worthing 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.

*J Ayres*

INSPECTOR