
Costs Decision

Site visit made on 23 August 2016

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 21 September 2016

Costs application in relation to Appeal Ref: APP/D3830/W/16/3151808 Land adjacent to Greenstede House, Wood Street, East Grinstead, West Sussex RH19 1UZ

- 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 Eastmead Industries Limited for a full award of costs against Mid Sussex District Council.
 - The appeal was against the refusal of planning permission for erection of new residential apartment building incorporating four storeys of accommodation to include 3 x 1 bedroom apartments and 8 x 2 bedroom apartments, over undercroft parking and refuse, recycling and bicycle storage.
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Decision

1. I refuse the application for an award of costs.

Reasons

1. 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.
 2. The appellant did not answer the question on the Costs Template as to whether this was an application for a partial or full award, but did express the view that the Council had behaved unreasonably which had caused unnecessary and wasted expense in submitting and pursuing the appeal, which could be taken to be an application for a full award with specific reference to the sunlight and daylight evidence. There were three reasons for refusal, the first was on sunlight and daylight, the other two were regarding the lack of an Undertaking. An Undertaking was submitted, dated 9 August 2016, some 8 months after the Council's Notice of Refusal.
 3. However, it is not uncommon for Councils to resolve that approval would be given subject to a Undertaking being submitted, and conversely, the absence of an Undertaking has to be a reason for refusal if the proposal is being turned down for other reasons. Since a Costs Decision would not comment on the amount of any award, the differentiation is not an essential part of the Decision.
 4. The application concerns the Council's approach to the daylight and sunlight Report and the application of Policy B3. The former is based on non-mandatory guidance as to the effects of development on the light reaching existing windows and hence rooms, and it is clear that the guidance is meant to be applied according to the circumstances of the case. Policy B3 does not
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- seek to set absolute values either, requiring a judgement as to whether a particular proposal is likely to cause 'significant harm' to the amenities of nearby residents. The application of the Guide should be a material consideration in this judgement. In addition to that there are the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
5. The result is that judgement is required to determine the extent to which failure to accord with the Guide should be afforded weight, how that relates to the 'significant harm' test of the local Policy, and how that relates to the material considerations, in this case the sustainable location and pressing need for housing.
 6. There have been some misunderstanding of the Guide and the difference between 'percentage' and 'percentage points', which could be characterised as unfortunate, but not unreasonable. There may have been a need to request a specialist on behalf of the Council, but the nature of the misunderstandings could have meant that the Officer was not aware of the need.
 7. The fact remains that by reading the appellants daylight and sunlight Report, there are failings in some cases, and by apparently quite high degree such as *'between 1% and 10% greater than the 20% reduction that would be considered noticeable'* for daylight, and there is a lower degree of failure in the sunlight calculation.
 8. In all, whilst the appellant clearly finds the way that Council dealt with the evidence unsatisfactory, the failings do not reach the standard of being unreasonable behaviour, and it appears from the date of the Undertaking the reference to ownership, that an appeal could have been necessary on that ground, depending on how the Council felt able to approach the lack of mitigation. Certainly the Appeal would have been dismissed in the absence of any Undertaking.
 9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S J Papworth

INSPECTOR