
Costs Decision

Site visit made on 5 September 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 11th October 2016

Costs application in relation to Appeal Ref: APP/Y3615/W/16/3152309 38 South Lane, Ash, Surrey GU12 6NG

- 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 Sharaz Homes Ltd for a partial award of costs against Guildford Borough Council.
 - The appeal was against the refusal of planning permission to demolish an existing bungalow, raise ground level and construct 1 No. detached houses (4 bed), 1 pair of semi-detached houses (2 x three bedroom) and a terrace of three houses (3 x three bedroom) and associated access, amenity and parking.
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Decision and Costs Order

1. 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 Guildford Borough Council shall pay to Sharaz Homes Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the reason for refusal relating to the impact of the access on the living conditions of the occupiers of 36 and 40 South Lane; such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is now invited to submit to Guildford 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.

Reasons

3. The costs application seeks a partial award of costs in respect of the first reason for refusal relating to the effect of the access on the living conditions of the occupiers of 36 and 40 South Lane.
 4. 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.
 5. The Guidance also indicates that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, and it gives examples. One of these is where a planning authority persists in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable. The circumstances of this case fall squarely within this example.
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6. Two relatively recent appeal decisions¹ for very similar developments to that proposed here in terms of the access and parking arrangements have held that there would be no grounds for withholding planning permission on the basis of the impact on neighbours' living conditions. One of those decisions related to a development serving 7 houses as opposed to 6 houses in this case, and where bin collection arrangements were less favourable than would be the case here.
7. Moreover, the Council has a duty to be consistent in its decision making. Neither of the previous refusals which led to those appeals included grounds relating to the effect of the access on neighbours' living conditions. The appellant would have had a reasonable expectation that the very similar access proposed here would be looked at in the same way. Whilst the first appeal application was decided under delegated powers, it was still the decision of the Council and does not entitle Members now to disassociate the Council from that decision. Nor can there be any reasonable suggestion that the previous Inspectors did not have all the facts before them as to the impact of the access, when it was plain to see what the arrangement would be.
8. I recognise that the impact on residents can be subjective, but in this case, where there is a well-documented appeal precedent, and where no proper distinction can be drawn between the previous cases and this, I consider that the Council has acted unreasonably in refusing the application for the reason it did. This has led the appellant incurring unnecessary costs in dealing with the issue.

Conclusion

9. I therefore conclude that unreasonable behaviour within the meaning of the Guidance has been demonstrated, and that the appellants were put to unnecessary expense in bringing the appeal on this ground. A partial award of costs is therefore justified.

JP Roberts

INSPECTOR

¹ Refs: APP/Y3615/A/14/2212092 and APP/Y3615/A/14/2216009