
Costs Decision

Site visit made on 20 September 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 13 October 2016

**Costs application in relation to Appeal Ref: APP/L3625/X/16/3142388
Kingswood Hall, Margery Wood Lane, Lower Kingswood, Surrey KT20 7BA**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Reigate & Banstead Borough Council for a full award of costs against Mr Michael Heighes.
 - The appeal was against the refusal of a certificate of lawful use or development for the construction of a concrete hardstanding for landing & take-off of helicopters.
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Decision: The application is granted in the terms set out below.

Reasons

1. The Planning Practice Guidance 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 or wasted expense in the appeal process. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against an appellant. These include where an appellant pursues an appeal that had no reasonable prospect of succeeding.
 2. The essence of the Council's case is precisely that the appellant's appeal that had no reasonable prospect of succeeding. The Council asserts this on the basis that appellant's evidence is unsubstantiated and selective, and contradicts statements previously made by the appellant in the course of a Public Inquiry held in 1983. The Council also contends that the appellant's evidence fails to take into account the physical separation of the site for the proposed helipad from the dwellinghouse.
 3. Although I have no way of knowing what statements the appellant may or may not have made at the Inquiry that took place in 1983, I have been provided with a copy of the Inspector's decision dated 21 December 1983. In this decision, the Inspector clearly and unambiguously states that one of the main issues before him was the potential loss of good quality agricultural land and specifically refers to the loss of the appeal site from agricultural use. It is therefore apparent to me that the Inspector was considering a change of use from agricultural use to equestrian use and was not, as the appellant suggests, considering a change from a residential use to equestrian use.
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4. I am mindful that the appellant is not professionally represented but the findings of the Inspector in the 1983 decision are clear on any plain reading. The appellant has not provided any clear explanation or justification for his contention that the land was in residential use at the time the Inquiry was held or that the Inspector's findings in relation to the use of the land for agriculture were not well founded.
5. I acknowledge that the appellant advanced an argument that a planning permission granted for the extension to Kingswood Hall in 2009 in effect granted planning permission for the residential use of the land. I recognise that the Council has subsequently confirmed that this permission has been lawfully implemented but it does not, as the appellant appears to suggest, automatically follow that the site for proposed helipad is therefore within the curtilage of Kingswood Hall. There are other considerations, which I set out in my Decision, that the appellant has not taken into account but which are fundamental to whether the site for the proposed helipad is within the curtilage for Kingswood Hall. I am again mindful that the appellant is not professionally represented but, in my view, this does not alter the fact that the argument presented could not succeed on the basis of the minimal evidence provided in support of it.
6. The Council suggests that the appellant fails to take into account the physical separation of the site for the proposed helipad from the dwellinghouse but the appellant does refer to various other physical features elsewhere on the site in support of his own case. This is therefore a matter of differing perspectives on the part of the Council and the appellant, and I make no criticism of the appellant for that.
7. However, I must return to the fundamental flaw in the appellant's case: that the land has the benefit of planning permission for a residential use. The planning history clearly indicates that this is not the case and the appellant has provided no evidence to the contrary. The whole of the appellant's case is predicated on that belief and this has led the appellant to mis-apply the normal considerations in relation to the definition of the curtilage of a dwellinghouse in terms of the purposes intimately associated with a building occupied as a dwellinghouse.
8. It is the formal and well-defined garden area surrounding Kingswood Hall that displays the intimate association with the building. The wider area of paddocks and grass meadows do not have that intimate association with the building. This is apparent from the differing functions of these parts of the site and is very apparent on the ground. Had the appellant correctly understood the planning history and the various functions of formal garden area compared with the paddocks and grass meadows, it should have been apparent that the appeal had no reasonable prospect of succeeding.
9. There is one further aspect of the appellant's evidence on which I must comment. The Council asserts that the appellant's evidence is selective and I am inclined to agree. By way of example, my attention was drawn to the Informative attached to planning permission 16/00494/HHOLD for the replacement stable building. That Informative explained that the site for the replacement stable building was considered by the Council to be outside the residential curtilage of Kingswood Hall. Despite being sited in the area that the appellant now asserts is within the residential curtilage of Kingswood Hall, the

appellant sought to rely on that Informative to avoid paying the Community Infrastructure Levy. I have great difficulty in reconciling that action with the appellant's assertion that this same land is within the curtilage of Kingswood Hall for the purposes of the appeal and this places the veracity of the appellant's other evidence into question.

10. The submission of and pursuance of an appeal that had no reasonable prospect of succeeding in my view constitutes unreasonable behaviour on the part of the appellant. I note that the appellant considers the right of appeal is an essential and fundamental part of the planning system, regardless of the chance of success, but the Planning Practice Guidance makes it clear that this is not the case. The Planning Practice Guidance clearly states that the right of appeal must be exercised reasonably. The appellant's unreasonable behaviour has caused the Council to incur unnecessary and the wasted expense in defending an appeal that should not have been submitted. I therefore consider that the full award of costs sought by the Council is justified.

Costs Order

11. In exercise of the powers under sections 174, 320 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Michael Heighes shall pay to Reigate & Banstead Borough Council, the full costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to Mr Michael Heighes, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Paul Freer

INSPECTOR