

Costs Decision

Site visit made on 25 October 2016

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 3rd November 2016

**Costs application in relation to Appeal Ref: APP/L3625/W/16/3154480
131 Gatton Park Road, Redhill, Surrey RH1 2EB**

- 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 Mr and Mrs Madden for a partial award of costs against Reigate and Banstead Borough Council.
 - The appeal was made against the refusal of planning permission for the erection of a new dwelling to rear of existing dwelling and creation of new vehicular access.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The applicant has made an application for a partial award of costs based on the Council's unreasonable behaviour in seeking a financial contribution towards affordable housing notwithstanding Government policy that such contributions should not be sought in connection with developments of less than 10 dwellings (PPG paragraph Reference ID: 23b-031-20160519) and that the matter has been considered previously at appeal.
3. Section 38(6) of the Act requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Policy CS15 of the Council's Core Strategy seeks a financial contribution towards affordable housing on sites of less than 10 units. Therefore, the Council rightly took this policy as its starting point. As required by the Act, it also took it into account the PPG. However, it found, on the basis of a Position Statement submitted in evidence, that the PPG did not outweigh Policy CS15. Whilst I have come to a different conclusion on this point, the Council's approach was not unreasonable in this regard.
4. However, at the time the Council submitted its evidence, the matter had also been considered in an appeal decision¹ which found that Government policy did outweigh Policy CS15. I note that another appeal decision with a similar finding has been issued subsequently². The Council's response to the costs application

¹ Appeal reference: APP/L3625/W/16/3151612

² Appeal reference: APP/L3625/W/16/3151989

makes no attempt to address the findings of the initial appeal decision or to distinguish between that case and the current appeal. The PPG is clear that Councils are at risk of an award of costs where they persist in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable (paragraph Reference ID: 16-049-20140306).

5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

6. 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 Reigate and Banstead Borough Council shall pay to Mr and Mrs Madden the costs of the appeal proceedings, limited to those costs incurred in addressing the third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
7. The applicant is now invited to submit to Reigate and Banstead 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.

Simon Warder

INSPECTOR