
Costs Decision

Site visit made on 1 December 2016

by Thomas Hatfield BA (Hons) MA MRTPI

Decision date: 6th January 2017

Costs application in relation to Appeal Ref: APP/L3625/W/16/3156676 34, 34A, 36, 36A Lesbourne Road, Reigate, Surrey, RH2 7LD

- 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 Roger Sargant for a partial award of costs against Reigate & Banstead Borough Council.
 - The appeal was against the refusal of planning permission for the existing building to be extended to provide two flats.
-

Decision

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

Reasons

2. 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.
 3. The application for costs has been made on the basis that the Council sought to withdraw one of its reasons for refusal late in the appeal process. This related to the lack of a financial contribution towards affordable housing provision, as required by Policy CS15 of the Council's Core Strategy. The Council state that they withdrew this reason for refusal following a review of Policy CS15, in light of recent appeal decisions including an award of costs against the Council. The reason for refusal was formally withdrawn on 16 November 2016.
 4. In their appeal submission, the appellant provided 7 examples of recent appeal decisions in Reigate and Banstead where a similar reason for refusal was advanced by the Council. In all 7 decisions, it was found that Core Strategy Policy CS15 was outweighed by Government guidance that such contributions should not be sought in connection with developments of less than 10 dwellings (PPG paragraph Reference ID: 23b-031-20160519). The 7 examples provided by the appellant date between 16 June and 5 August 2016. The Council would therefore have been aware of these decisions long before it completed its review of Policy CS15 on 11 November 2016.
 5. PPG lists examples of the behaviour that may give rise to a procedural or a substantive award of costs against a local planning authority. These include: the withdrawal of a reason for refusal, and persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable. In this case, the Council has withdrawn a reason for refusal at a late stage of the appeal process, as set out above. In addition, the Council has
-

received a series of appeal decisions that found that Core Strategy Policy CS15 is outweighed by Government guidance set out in PPG. Despite this, it has chosen to pursue this reason for refusal until late in the appeal process. In these circumstances, whilst I consider that the applicant may not have been put to large amounts of additional expense in countering the Council's position during the appeal process, extra costs were incurred, and an award of costs in these specific respects is justified.

Conclusion

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

Costs Order

7. 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 & Banstead Borough Council shall pay to Mr Roger Sargent, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred arguing against the Council's requirement that a financial contribution be made towards the provision of affordable housing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the Reigate & 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.

Thomas Hatfield

INSPECTOR