
Costs Decision

Site visit made on 1 December 2016

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Decision date: 24th January 2017

**Costs application in relation to Appeal Ref: APP/L3625/W/16/3155661
12 Beech Road, Reigate, Surrey, RH2 9LR**

- 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 & Mrs Bates for a partial award of costs against Reigate & Banstead Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a dwelling with associated parking.
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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, in part, 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 The reason for refusal was formally withdrawn on 17 November 2016.
 4. Section 38(6) of the Planning and Compulsory Act 2004 requires that decisions are 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 dwellings. Accordingly, the Council was correct to take this policy as its starting point, and weigh this against the guidance set out in PPG. The Council's approach was not unreasonable in this regard.
 5. However, it is clear that the Council has received a significant number of appeal decisions that have found that Policy SC15 is outweighed by guidance in PPG. The appellant has highlighted an appeal decision from January 2015 (ref APP/L3625/W/14/3000049), and the Council states that a number of similar decisions were received prior to the first award of costs in November 2016. The Council would therefore have been aware of these decisions long before it completed its review of Policy CS15 on 11 November 2016.
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6. Separately, the appellant states that the Council failed to adhere to deadlines during the appeal process, and went against advice given at the pre-application stage. In this regard, the Statement of Case was submitted a day after an already extended deadline had passed. However, this did not raise any new issues, and simply confirmed that the Council would not be pursuing the third reason for refusal, and provided suggested conditions were the appeal to succeed. It has not been demonstrated how this late submission has caused the appellant to incur unnecessary or wasted expense. With regards to the pre-application advice provided by the Council, I note that this was not supportive of the development and stated that the effect on neighbour amenity would require further assessment at the application stage. In any event, pre-application advice is not binding on the Council in determining later applications. Accordingly, the Council did not act unreasonably in applying the second reason for refusal relating to living conditions.
7. 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 number of 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. This would have resulted in the appellant undertaking some additional work to rebut the 3rd reason for refusal which would not have been needed if the reason had been withdrawn in a timely manner.

Conclusion

8. 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

9. 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 & Mrs Bates, 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.
10. 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