The Planning Inspectorate

Costs Decision

Site visit made on 17 January 2017

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 6 February 2017

Costs application in relation to Appeal Ref: APP/D3640/W/16/3161626 Thornacott, 37 Brimshot Lane, Chobham, Surrey GU24 8RN

- 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 Dale Greenhead for a partial award of costs against Surrey Heath Borough Council.
- The appeal was against the refusal of the Council to grant planning permission for new replacement residential 3 bedroom dwelling after demolition of existing residential dwelling and garage/carport.

Decision

1. The application for a partial award of costs is refused.

Reasons

2. The national Planning Practice Guidance (PPG) 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.

3. The appellant sought pre-application advice from the Council with regard to an application to demolish a bungalow and to construct a two-storey dwelling on a different part of the appeal site.

4. The Council advised that the scale and style of development was acceptable and that their concern related only to a first floor bedroom window which faced an adjacent dwelling, 35 Brimshot Lane (No 35), and the retention of a boundary hedge. The advice stated that there were no significant concerns in relation to the separation distances between the proposed dwelling and a bungalow to the north, 39 Brimshot Lane (No 39).

5. The appellant subsequently altered the layout of the proposed dwelling's first floor which resolved the issue of the bedroom window facing No 35, but resulted in a bedroom window directly overlooking habitable rooms at 8 Brimshot Lane (No 8).

6. At determination the Council refused the application on the grounds of the separation distance between the dwelling and No 39, as well as a loss of privacy for occupiers of No 8. The Council also stated that the proposed extent of hardstanding would be an austere element in the street scene which would be detrimental to the character of the area.

7. The PPG states that pre-application advice provided by the local planning authority cannot pre-empt the democratic decision making process or a particular outcome, in the event that a formal planning application is made[1]. However, the PPG also states that all parties are expected to behave reasonably throughout the planning process, and behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded[2].

8. I appreciate that the Council's pre-application advice states clearly that it is officer opinion and does not prejudice formal determination. Nonetheless, the delegated officer's report recommends refusal on the grounds of two elements (the hardstanding and separation from No 39) that were unchanged from the layout at pre-application stage and which, at pre-application, were not considered harmful in relation to development plan policies. The third reason for refusal was a consequence of the appellant acting on the pre-application advice[3]. Furthermore, the Council states[4] that it did not enter into negotiations with the appellant during the application process or advise the appellant that these issues were now of concern.

9. Whilst I appreciate that adjustments in relation to the Council's concerns could not have been made during the application stage without significant design changes, had the appellant been informed that the application was to be refused, he would have had the option of withdrawal, which would have saved time in the overall process.

10. The Council's decision notice states that officers have provided or made available pre-application advice to seek to resolve problems before the application was submitted, consistent with the requirements of the National Planning Policy Framework. Given that the officer's report concluded that there was harm in relation to issues which had been discounted at the pre-application stage, and this was not communicated to the appellant, I conclude that the Council has not sought to resolve problems prior to the application's submission. For these reasons I consider the Council has demonstrated unreasonable behaviour.

11. However, notwithstanding the inconsistency between the Council's reasons for refusal and its pre-application advice, the points made in the reasons for refusal and officer's report are clear and relate to relevant development plan policies. As such, the costs associated with the appeal cannot be considered wasted expense.

12. Consequently, whilst I appreciate that the outcome of the application will have come as a disappointment to the appellant and I appreciate his frustration, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that therefore an award of partial costs is not justified.

Amanda Blicq

INSPECTOR

[1] ID 20-011-20140306
[2] ID 16-033-20140306
[3] Relocation of bedroom window
[4] Costs response, 2.4