
Costs Decisions

Site visit made on 20 February 2017

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 01 March 2017

Costs application in relation to Appeal Ref: APP/L3625/W/16/3162910 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 and 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. The Planning Practice Guidance 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 appellant seeks a partial award of costs in respect of the Council's behaviour in relation to it seeking a financial contribution towards affordable housing and on a second matter related to inconsistency with the pre-application advice that was provided to the applicant.
 4. The Council withdrew its reason for refusal in relation to the requirement for a financial contribution for affordable housing at the submission of its statement of case, 28th December 2016. At that time it was contended the Council had reviewed its position and no longer sought such contributions. It advised that at the time of the decision it was still seeking such contributions and was relying on an appeal decision in an adjoining borough with similar circumstances and a review of the relevant policy CS15 it had undertaken following the various legal proceedings and changes to the advice in the Planning Practice Guidance that were on-going.
 5. Whilst it is right that section 38(6) identifies that the starting point for decision making is the development plan and therefore policy CS15 was relevant, other material considerations need to be given sufficient weight. It is evident that there was a significant body of decisions that were building in this local authority area which sought to give greater weight to government guidance and that this indicated that the development plan policy was not wholly consistent with that advice. This is the position the Council has now accepted.
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6. The Council suggest that it withdrew the reason for refusal at the earliest possible time however in the context of this appeal that was 28th December 2016. The decision to change its policy had been taken sometime before this and the Council had withdrawn similar reasons for refusal at appeal. I note that on appeal APP/L3625/W/16/3155661, an appeal on the same site for a similar development by the same appellant they withdrew a similar ground in November 2016. This would suggest that it was not the earliest possible time they could have withdrawn this reason.
7. I am satisfied that the Council acted unreasonably in attaching the reason for refusal given the previous decisions that had occurred and that they did not withdraw this reason, or notify the appellant of their intention to withdraw it, at the earliest possible time. The Planning Practice Guidance advises that the withdrawal of a reason for refusal and persisting in objecting to a scheme which an inspector has found acceptable are justifications for an award of costs. Although the appeal would still have proceeded the appellant would not have had to address the issue of the financial contribution and this was therefore unnecessary and wasted effort leading to the appellant incurring additional expense.
8. In terms of the pre-application advice letter from the Council this provides no positive endorsement of the scheme nor does it positively comment that there was no issue regarding the relationship with the host property. Further the letter is explicit that the pre-application advice is not binding and is one officer's opinion. In relation to neighbour amenity it states this element would require further assessment at the application stage. Although it is contended that there was a specific conversation regarding the relationship with the host property this is not captured in the pre-application advice letter. I am satisfied that the Council did not act unreasonable in relation to this matter.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated, limited to that related to consideration of the financial contribution towards affordable housing, and that a partial award of costs is justified.

Costs Order

10. 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 and Mrs Bates, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to those aspects of their case addressing 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.
11. The applicant is now invited to submit to 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.

Kenneth Stone

INSPECTOR