
Costs Decision

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: 03 March 2017

Costs application in relation to Appeal Ref: APP/L3625/W/16/3162670 8 Pilgrims Way, Reigate, Surrey RH2 9LG

- 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 Galaxy Ltd for a full award of costs against Reigate & Banstead Borough Council.
 - The appeal was against the refusal of planning permission for the erection of two detached dwellings, garaging, parking and associated access.
-

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 application for planning permission as originally submitted by the appellant was invalidated for two reasons, those being insufficient detail of the proposed garages and the lack of a planning obligation related to affordable housing.
 4. The appellant sought to address these matters, in part, by the submission of plan 8PW P2 D. This plan is a later revision of a plan the Council already had. Its title is 'Proposed Site Plan' the plan reference number clearly identifies it as a revision and the revisions are listed on the plan including a date and the nature of the revision. Whilst I accept that the language used by the appellant in the various covering letters and statements is ambiguous and that there is no direct reference to the alterations, the plan is clearly numbered and labelled. I would also take issue with the Council that the changes are subtle, there are clearly annotated dimensions included on the revised plan and the alignment of the site boundary is readily apparent.
 5. This plan was submitted before the application was made valid. Upon receipt of the information and at the point the Council chose to validate the application it was incumbent on the Council to ensure that the information contained in the application was sufficient to ensure that the application was valid. Any reasonable scrutiny of the plans at that stage would have identified the inconsistencies and these could readily have been reconciled by reference to the latest iteration of the 'Proposed Site Plan' which also included a location plan and a red line.
-

6. Beyond validation, before the determination of the application in seeking to understand the proposals it would be reasonable to expect an experienced planning officer to review the information submitted with the application and to familiarise themselves with the proposal. In so doing there was a further opportunity to identify and reconcile any inconsistency in the plans and to understand what the proposal was that they were being asked to consider. To rely on confusion due to the naming of the file suggests that these would be more important than the content and the details of the plan, not a sustainable position.
7. In terms of the plans, I am satisfied that the Council were unreasonable in their behaviour in not identifying or reconcile the inconsistency and then proceeding to determine the application on the basis of the earlier plan. Had the Council considered the later revised plan it would have concluded that the proposal was similar to a scheme it had previously found acceptable and it would have been unreasonable if it refused permission. I therefore find that the Council's unreasonable behaviour has led to the appellant incurring unnecessary expense in having to appeal to challenge the first reason for refusal related to the impact on 9 Beech Road.
8. Turning to the Council's position on it seeking a financial contribution towards affordable housing, which was the subject of the second reason for refusal. The Council withdrew this reason for refusal and no longer contested the matter at appeal. This position however was only confirmed at the submission of its appeal statement, after the appellant had submitted its appeal and undertaken the work required to address the concern identified in the reason for refusal and the officer report.
9. The Council contend 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 at that time. They further contend that they withdrew the reason at the earliest possible opportunity.
10. 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.
11. The Council suggest that it withdrew the reason for refusal at the earliest possible time however in the context of this appeal that was only at the submission of their statement of case. The decision to change its policy had been taken sometime before this.
12. I am satisfied that the Council acted unreasonably in attaching the second 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. This therefore resulted in unnecessary and wasted effort leading to the appellant incurring additional expense.

13. 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 full award of costs is justified.

Costs Order

14. 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 Galaxy Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. 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