
Costs Decision

Site visit made on 18 April 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 9th May 2017

Costs application in relation to Appeal Ref: APP/W1715/W/16/3166052 Land adjacent Hideaway, 12 Cherry Drove, Horton Heath, Eastleigh SO50 7DS

- 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 Jason Wilkinson of Rivendale Homes Ltd for a full award of costs against Eastleigh Borough Council.
 - The appeal was against the refusal of planning permission for conversion of double garage to one bed dwelling house, with associated parking and amenity space.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) section 'Appeals' advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
 3. An award of costs is sought on substantive and procedural grounds. In summary, the applicant considers that the Council's analysis of the proposal was not objective and reasoned, being very similar to the Council's assessment of a previous, materially different application. In particular, the Council did not have sufficient regard to the existing site characteristics and it did not demonstrate harm. It failed to take sufficient account of a recent appeal decision in its area and it did not give appropriate weight to national policy. Consequently, the Council failed to substantiate its reasons for refusal. In addition, the applicant considers that there was a lack of cooperation by the Council during the processing of the application and an unjustified delay in making its decision.
 4. The Council's response in summary is that it justified why the application was refused by reference to clear and precise reasons. These were amplified in the delegated report, which explained why in its view the proposal would not conform to the Development Plan and other material considerations, including relevant appeal decisions. The Council had an extended dialogue with the applicant prior to and during the processing of the application and it had therefore pursued a proactive approach. However, it had been unable to
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determine the application within the prescribed period due to resource issues and apologised to the applicant.

5. At paragraph 049, the PPG provides a list of examples of when a Council might be at risk of an award of costs due to unreasonable behaviour relating to the substance of a case. These include preventing or delaying development which should clearly have been permitted, failing to produce evidence to substantiate each of the reasons for refusal at appeal or making vague, generalised or inaccurate assertions about the impact of a proposal which are unsupported by any objective analysis. The list is not exhaustive.
6. To support its first refusal reason, the Council set out what it regarded as the key characteristics of the surrounding area. It assessed the impact of the proposal against those characteristics in terms of its scale and layout relative to the plot size, whilst clearly recognising that the proposal was centred on an existing building. The Council's evidence is detailed and specific to the proposal. An informed conclusion is reached based on that evidence. The density of the proposal relative to that of its surroundings, adequacy of parking provision and storage might have visual consequences but would not necessarily be determinative factors in terms of visual impact. Therefore, I do not find any inconsistency between the Council's comments on those matters and its conclusions on the first refusal reason. The lack of detailed reference to internal space standards is not significant in relation to the Council's assessment. The Council clearly distinguished between the proposal and the previous refused application and explained why the amendments did not overcome its previous objections.
7. The Council gave appropriate weight to relevant advice in its adopted *Quality Places* Supplementary Planning Document (SPD). It also made reference to appeal decisions which it considered were relevant including the decision referred to by the applicant¹, it examined them and applied what it felt to be appropriate weight. In particular, the Council provided a detailed explanation as to why it considered that the appeal decision relied on by the applicant was not substantially similar to the proposal. A briefer explanation had been offered to the applicant during the processing of the application. Consequently there is no convincing evidence to suggest that the Council did not have proper regard to that appeal decision.
8. To support its second refusal reason, the Council's evidence is less extensive but is specific to the proposal and an informed conclusion is reached, based on the advice in *Quality Places*. Whilst the Council has also referred to the effect of the amenity space on its surroundings under this reason, in my formal decision I have dealt with this point together with the matters under refusal reason 1. Therefore, I have dealt with the costs application in a similar fashion.
9. The Council concludes its overall findings on both refusal reasons against the relevant policies in the Development Plan. The Council's evidence also shows that it properly assessed the proposal against the National Planning Policy Framework and it acknowledged salient benefits, in particular the accessible location and the contribution towards the shortfall in housing supply.

¹ Ref APP/W1715/A/14/2213059.

10. I appreciate the applicant considered that they had revised the previous application to overcome the Council's objections and felt that they had to pursue an appeal following the latest refusal. Even so, the matters referred to in the Council's reasons for refusal are not clear-cut. Reaching conclusions on such matters is therefore largely a matter of judgment. Consequently, it is entirely legitimate for the Council to hold opposing views to the applicant. Provided the Council's views are, as in this case, supported by relevant evidence, its judgment cannot be regarded as being unreasonable.
11. Taking all of the above matters into consideration, I find that there was nothing vague or generalised about the Council's reasons for refusal. They were underpinned by a body of evidence which withstood objective scrutiny and they had a basis in the Development Plan and other material considerations, including national policy. It follows that although I did not share the Council's conclusions on the merits, the Council was able to substantiate its case at appeal. Consequently, I am not persuaded that the Council has prevented or delayed development which should otherwise clearly have been permitted.
12. Turning to the procedural claim, the applicant did not suggest that the Council had behaved unreasonably in relation to any of the matters listed at paragraph 047 of the PPG. Paragraph 048 advises that Councils should give applicants a proper explanation, where it is clear that it will fail to determine an application within the prescribed period. Whilst that did not happen in this case, the Council has since acknowledged its failings in this respect.
13. Whilst the Council may have maintained a continued dialogue with the applicant, there is little evidence to show that was the case. On the other hand, the applicant appears to have been unable to obtain a detailed explanation of the Council's concerns during the processing of the application or have had the opportunity to make further amendments. Consequently, I am not convinced that the Council approached its decision taking in accordance with the advice at paragraphs 186 and 187 of the Framework.
14. Therefore, I regard the Council's handling of the application as amounting to unreasonable behaviour to the above limited extent. Ultimately however, I am not persuaded that the applicant has incurred any wasted expenditure as a result. This is principally because given the Council's decision on the application, its objections could not have been overcome by further negotiations and it would still have been necessary for the applicant to make an appeal.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Stephen Hawkins

INSPECTOR