
Costs Decision

Site visit made on 25 April 2017

by **Paul Jackson B Arch (Hons) RIBA**

Decision date: 29 June 2017

Costs application in relation to Appeal Ref: APP/C3620/W/17/3166720 Partridge Cottage, Partridge Lane, Newdigate, RH5 5EA

- 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 Paul Keane for a full award of costs against Mole Valley District Council.
 - The appeal was against the refusal of the Council to grant planning permission for conversion of detached brick built outbuilding into a dwelling.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The gist of the appellant's claim is that the Council prevented development which should clearly have been permitted, having regard to the development plan, national policy and any other considerations. The application was refused for the single reason that the proposed dwelling would be too close to an existing kennel business, despite the applicant clearly stating that this would be closed on conversion taking place. This matter could easily have been dealt with by condition.
 3. The Council responds that no condition was put forward by the applicant during the application. The appellant has not advised whether other parts of the kennel would be shut down. Any proposed condition would be unreasonable bearing in mind that the kennel was only granted planning permission in 2014. No unilateral undertaking has been forthcoming.
 4. Planning Practice Guidance (PPG) of March 2014 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. The PPG says that local authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal or in relation to procedural matters. This can be by unreasonably refusing or failing to determine planning applications, by unreasonably defending an appeal or, for instance, a failure to co-operate with the other party.
 5. Whilst various matters needed to be clarified before the Council could consider the application, notably the extent of the site area, there would have been no doubt when the decision was made that the applicant was in control of the whole area near the proposed dwelling where dogs were being accommodated or trained. The applicant had stated clearly in the Design and Access Statement
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that it was his intent to close the kennel business on completion of the conversion works. This information was before the Council. On this basis, it would have been reasonable to impose a condition requiring the kennel and dog training use to cease on occupation. A planning obligation would not be necessary to achieve this objective. PPG indicates that planning obligations should not be sought where they are clearly not necessary to make the development acceptable in planning terms. I give little weight to the suggestion that the relatively short period during which the business had operated had any bearing on the application.

6. I conclude 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.

Conclusion

7. 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 Mole Valley District Council shall pay to Paul Keane 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.
8. The applicant is now invited to submit to Mole Valley District 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.

Paul Jackson

INSPECTOR