
Costs Decision

Site visit made on 16 May 2017

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 6 July 2017

Costs application in relation to Appeal Ref: APP/R3650/W/17/3168176 Montana, Churt Road, Hindhead GU26 6PR

- 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 A Law for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for the erection of three (3no.) detached, 2-storey dwelling houses (1 x 5-bed & 2 x 3-bed) each with double garages and extended access drive.
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Decision

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

Reasons

2. National Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeals process. The application needs to clearly demonstrate that this is the case.
3. The applicant is seeking a full award of costs in relation to both the procedural and substantive nature of the Council's behaviour.

Procedural Matters

4. The applicant argued that in the context of the pre-application advice of officers and advice during the determination period that the application should have been approved under delegated powers rather than referred to the Southern Area Planning Committee.
 5. The Council indicated that as officers were minded to recommend approval of the application and the proposal involved a net gain of two or more dwellings it was necessary for the application to be considered by Members under the Council's scheme of delegation. Whilst I have not been provided with evidence of the Council's Standing Orders I have no reason to doubt this comment. Moreover, having referred the matter to the Committee there was a possibility that Members might reach a different view from officers but there would be no reason for officers to highlight the matter whether they were aware or not.
 6. With regard to the role of the Committee Chairman in relation to the application, the Council has indicated that the Chairman declared an interest in
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the application, being an immediate neighbour and took no part in the discussion or the vote on the application.

7. On this basis, I find that in procedural terms the actions of the Council were not unreasonable and did not result in the applicants incurring unnecessary or wasted expense in the appeal process.

Substantive Matters

8. The applicants argued that in reaching their decision Members disregarded the conclusions of the Inspector who decided upon a previous scheme for the appeal site and the pre-application advice of officers, neither of which raised in-principle concerns about the scale of the development proposed.
9. I have no evidence that Members pursued what the applicants described as appearing to be a pre-determined decision to refuse planning permission and therefore I find no unreasonable behaviour in this respect.
10. It is not unreasonable for Committee Members to come to a different conclusion from their professional advisors but the decision should be made on sound planning grounds. In this case, I consider that the part of the reason for refusal relating to a cramped and crowded layout was based on matters of judgment which is likely to reflect Members' local knowledge. It was also related to relevant development plan policies, notwithstanding that the Council does not have specific standards for separation distances. As I found in my appeal decision, the proximity of Plot 3 to Montana and the distance between Plots 1 and 2 is a matter of judgment. Whilst I found that the distances would not result in a cramped or crowded layout or cause harm to the character of the area it was not unreasonable for Members to reach a different view.
11. However, in respect of the Council's case that the proposal would result in excessive bulk and mass and would provide insufficient space for landscaping I have no specific evidence which substantiates either of these claims. The alleged harm is based on vague assertions which have not been supported by evidence and the Council's response to the application for costs focuses on visual amenity which does not form part of the reason for refusal. Moreover, whilst the officer report indicates that the three plots would each provide adequate amenity space no reason has been provided as to why Members considered that there was insufficient space for landscaping. On this basis I find that the Council behaved unreasonably and that the applicant would have incurred unnecessary or wasted expense in the appeal process.
12. It is also apparent that in reaching their decision Members or the Committee did not undertake a balancing exercise in the light of all relevant facts and the advice in the National Planning Policy Framework. On this basis the Council's behaviour was also unreasonable leading to unnecessary or wasted expense.
13. It has been demonstrated that there was unreasonable behaviour resulting in unnecessary expense as described in PPG by the Council in respect of their failure to provide relevant evidence to support its reason for refusal in respect of bulk and mass, space for landscaping and appropriate consideration of the planning balance. As a result, for the reasons given, a partial award of costs on this matter 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 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Waverley Borough Council shall pay to Mr and Mrs A Law the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the reason for refusal in respect of bulk and mass, space for landscaping and appropriate consideration of the planning balance, such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicants are now invited to submit to Waverley Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Cost Office is enclosed.

Kevin Gleeson

INSPECTOR