



Costs Decision

Site visit made on 1 May 2019

by N Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th August 2019

Costs application in relation to Appeal Ref: APP/A1720/W/18/3218772 5 Warsash Court, Havelock Road, Warsash, Southampton, SO31 9JZ

- 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 Ms Jane Conway for a full award of costs against Fareham Borough Council.
 - The appeal was against the refusal of planning permission for replace existing Velux window with a Velux double balcony terrace window.
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Decision

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

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 describes that the Council has acted unreasonably by relying on vague references to policies and supporting documents, whereby it was not clear to the appellant what the specific concerns of the Council were. They are also concerned that the reason for refusal was inaccurate (referring to apartments, rather than an apartment), that it was erroneous to rely on a Supplementary Planning Guidance document and that inadequate weight was applied to policies relating to sustainable development.
4. The Council's reason for refusal describes its concern as 'an unacceptable level of overlooking and activity detrimental to the residential amenities of the occupiers of the neighbouring apartments'. I consider that to be clear and precise. Policy DSP3 of the Local Plan relates directly to potential impacts of development on neighbouring occupiers. The policy references privacy directly and so I do not see that any further description relating to this policy should have been required in the reason for refusal.
5. Policy CS17 seeks to secure high quality design. Whilst that policy provides a series of attributes that well-designed development should include, I do not see that list as exhaustive. It is clear to me from the Council's report and the decision notice that its concern was that the proposals would not constitute high quality design because of the impacts that it described as being harmful. Accordingly, I do not see it as unreasonable to have referenced this policy or to have not directed the appellant to a specific point within it.

6. The appellant also describes that reference is made to Supplementary Planning Guidance, which is 23 pages long. However, they have referred to the relevant section in their statement, have included it as an appendix and have referenced it in their application for an award of costs. On that basis, I am satisfied that the appellant was aware of the section of that guidance that the Council saw as relevant to the appeal and that even had unreasonable behaviour in respect of the reference to the SPD occurred, no unnecessary or wasted expense was incurred as a result.
7. I do not share the appellant's concern that for the Council to have relied upon its Design Guidance SPD was unreasonable. That document identifies that balconies can cause overlooking problems. There are two diagrams, neither of which precisely mirror the circumstances of the appeal proposal, but they appear to me to be intended to be illustrative. A document such as the SPD cannot provide illustrations of all possible balcony scenarios. I think that it was reasonable of the Council to refer to it, with reliance also on relevant development plan policies given the nature of the concerns that the Council was raising.
8. The appellant is concerned that the Council has referred to impacts on 'apartments' (plural) rather than just on Flat 4. In the context of the Officer's report and the Council's statement, it is clear to me that the Council's concern in that it related to overlooking related only to one window at Flat 4. It appears to me as though the plural reference in the reason for refusal relates to impacts that the Council describes on the shared patio area in its Statement. In any event, the appellant has expressed their case as it relates to overlooking of Flat 4 clearly, without addressing potential overlooking of other flats in detail and so I do not see that unnecessary or wasted expense has occurred, in any event.
9. A final concern of the appellant is that the Council did not give proper weight to development plan policies relating to sustainable development. In refusing planning permission for the reason described, it is clear to me that the Council did not consider the development to be sustainable and so I do not think it unreasonable that reference was not made to such policies by the Council.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

N Smith

INSPECTOR