
Costs Decision

Site visit made on 24 July 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 15 August 2019

Costs application in relation to Appeal Ref: APP/R3650/D/19/3227156 The Brake, Odiham Road, Farnham GU10 5AD

- 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 Mrs Lisa Jayne Klaver for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for new boundary fence, entrance wall and gates.
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Decision

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

Procedural Matter

2. I note that the property is also referred to as Pottinger House within the appeal documents. For the purposes of this decision I have used the name that was provided on the planning application form.

Reasons

3. The Planning Practice Guidance (PPG) 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.
4. The Guidance indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal. The Guidance further states that providing information that is shown to be manifestly inaccurate also risks an award of costs.
5. The proposal is for a new boundary fence, entrance wall and gates. The appeal was refused for reasons including its effect on the Green Belt. However, the appellant strongly refutes that the proposal is within such a designation.
6. The Council completed the Appeal Questionnaire answering "no" to the question of whether the site is within a Green Belt. However, when clarification was requested, the Council stated that the site is within the Green Belt. The appellant then provided a screenshot of a map on the Council's website identifying the site as within the planning designation 'Countryside Beyond the Green Belt'. The Council's comments were sought, and it did not dispute the evidence. Therefore, the evidence before me identifies that the site does not lie within the Green Belt.

7. The Council has therefore behaved unreasonably for refusing the application on the basis of Green Belt harm, and this unreasonable behaviour has directly caused the appellant to incur unnecessary and wasted expense in the appeal process.
8. The applicant has applied for a full costs award. However, it is clear within the reason for refusal that the proposal was considered unacceptable for other reasons not solely relating to the Green Belt. It states "The proposal will result in material harm to the rural landscape and cause harm to the character of the countryside and the Green Belt" (my emphasis). Therefore, the harm to the character of the area was also a reason for the proposal being refused. The policies listed within the refusal also relate to such considerations (TD1 of the Waverley Local Plan Part 1, Strategic Policies and Sites (2018), saved policies D1 and D4 of the Waverley Borough Local Plan (LP) (2002) and paragraphs 127 and 130 of the National Planning Policy Framework (2019).
9. Therefore, I do not consider that the appeal would have been avoided had the refusal not included the Green Belt reason. I am also aware that saved policy RD2 of the LP was listed. This relates to extensions of dwellings in the countryside and I have found it less relevant to the proposal but not unreasonable given the lack of a specific policy for domestic fencing and gates.
10. I consider that the applicant has incurred extra costs in countering the Council's position in relation to Green Belt issues. Therefore, an award in the specific respect to this matter is justified.

Conclusion

11. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 Waverley Borough Council shall pay to Mrs Lisa Jayne Klaver, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the reason for refusal references to the Green Belt.
13. The applicant is now invited to submit to the Waverley 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. 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 Costs Office is enclosed.

Tim Crouch

INSPECTOR