
Costs Decision

Site visit made on 12 August 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2019

Costs application in relation to Appeal Ref: APP/Y3615/W/19/3230102 37 Quarry Road, Hurtmore, Godalming GU7 2RW

- 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 D Salkeld for a full award of costs against Guildford Borough Council.
 - The appeal was against the refusal of planning permission for re-use and conversion of an existing annexe to create a single unit of residential accommodation.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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.
3. The application for costs relies, essentially, on the following grounds:
 - a) The Council relied on out-of-date policies in making its decision and failed to properly consider recently adopted Local Plan policies;
 - b) The Council unreasonably concluded that the building, which already exists, would be harmful to openness and visual amenity, and considered potential future development that was not part of the proposal;
 - c) Reason for refusal number 3 lacked clarity and precision; and,
 - d) The Council ignored the expert advice of the Highway Authority.
4. The Council's decision was made 5 days after it adopted the Guildford Borough Local Plan: strategy and sites 2015 – 2034 (the Local Plan). The decision notice, however, referred to policies from the Guildford Borough Submission Local Plan: strategy and sites – main modifications (2018) and the saved Guildford Borough Local Plan (2003). The Council has explained that the Officer's Report was completed prior to the adoption of the Local Plan, but the decision was issued later, due to an internal checking process. Whilst this explains the sequence of events, it does not change the fact that the application was not determined until the decision notice was despatched. At this time many of the saved policies quoted on the notice had been superseded by the Local Plan, which was, by then, part of the development plan. The

decision notice did not, therefore, refer to the relevant policies that should have been considered in arriving at the Council's decision.

5. Nevertheless, I must consider whether this error has led to any unnecessary or wasted expense in the appeal process. The Officer's Report acknowledged, at the outset, that the emerging Local Plan was to be considered for adoption at an impending Council meeting. The relevant policies were listed, and it was noted that the advanced stage of preparation meant that they should be afforded "substantial" weight. The emerging policies were referred to throughout the report, in particular where conclusions were reached on each issue. On each issue, the proposal was considered to be contrary to both saved, and emerging, policies. I can therefore see no evidence that a different decision would have been reached if the report had been reconsidered to take account of the adoption of the Local Plan.
6. The appellant's Statement correctly focussed only on the policies of the Local Plan. She did not, therefore, incur any additional expense in setting out how the proposals complied with policies that had since been superseded. Consequently, although the decision notice issued by the Council did not reflect the development plan position at the time the decision was made, this did not result in any unnecessary or wasted expense for the appellant in the appeal process.
7. The PPG says that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The building already exists, and no external alterations were proposed, other than fencing to the rear. However, the proposal to create a separate dwelling would change the way the building was perceived. It would also increase the potential for future development of the overall site by two households instead of one. These concerns are explained and justified in the Officer's Report. I have not agreed with the Council's apprehensions on these issues, and I concluded that openness can be maintained through the imposition of a planning condition. However, the Council did not act unreasonably in coming to a different view.
8. The PPG says that local planning authorities are at risk of an award of costs if they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The third reason for refusal on the decision notice conflates two quite separate issues; the sustainability of the location for residential development, and the impact of the development on the living conditions of occupants of the proposed dwelling and adjoining dwellings. Whilst this is a little confusing on first reading, when considered alongside the Officer's Report, I found that the Council's concerns on both issues were reasonably easy to discern, albeit that two separate reasons for refusal would have provided greater clarity.
9. The appellant's statement covered both of the main issues that I identified from the reason for refusal, and it did not cover any extraneous matter as a result of any lack of clarity. Consequently, the wording of reason for refusal number 3 did not result in any unnecessary or wasted expense for the appellant in the appeal process.
10. The PPG says that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal on appeal.

The fourth reason for refusal was based on harm to highway safety and operation as a result of insufficient off-street car-parking being proposed as part of the development. This reason was included despite a consultation reply from the Highway Authority, which raised no objection, and specifically stated that any resultant overspill parking would not result in conditions prejudicial to highway safety. The Council is not bound by the advice it receives from expert consultees, but where it departs from that advice it should provide sufficient evidence to demonstrate the factors that have led to a different conclusion.

11. The Officer's Report summarises the Highway Authority's comments under the heading "statutory consultees". The section of the report that deals with "highway/parking considerations" does not provide a clear explanation of why the advice was not followed, but reference is made to anecdotal evidence of a high level of road parking, which can affect safety and operation of the highway. This evidence was gained from third party representations, which are summarised in the Officer's Report. These representations were illustrated with photographs showing examples of on-street parking in the locality. In its comments on the application for costs, the Council also says that the site was visited twice, and the significant level of on-street parking was noted at each time, although the evidence from these visits was not contained in the Officer's Report.
12. It was not unreasonable for the Council to weigh the evidence from residents, and the observations gained from its own site visits, against the expert advice of the Highway Authority. This balancing exercise could have been carried out more explicitly in the Officer's Report. Nevertheless, they were legitimate factors for the Council to weigh against the Highway Authority's consultation reply. Even though I came to a different conclusion, it was not unreasonable for the Council to find that those factors outweighed the Highway Authority's advice.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR