
Costs Decision

Site visit made on 4 September 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2019

Costs application in relation to Appeal Ref: APP/C1760/W/19/3224510 Heather Corner, Chilworth Road, Chilworth SO16 7JZ

- 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 T Sweetnam of Firvale Clinic for a partial award of costs against Test Valley Borough Council.
 - The appeal was against the refusal of planning permission for use of part of the house as a private aesthetic medicine clinic and conversion of garaging to provide 3-bed house.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ (the PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG² lists different types of behaviours which may give rise to a substantive award against local planning authorities. The applicant considers that the Council's second reason for refusal was not supported by appropriate development plan policy.
3. Policy COM1 of the Test Valley Borough Revised Local Plan³ (LP) sets out the housing requirements for the area administered by the Council. I accept that development proposals resulting in the loss of dwellings would fail to accord with the objectives of Policy COM1. However, the text of the policy does not preclude the loss of residential floorspace or the replacement of large single houses with a dwelling of a different type or size.
4. The premises do not appear to be currently used for residential purposes, but the appeal scheme would include the retention of a 3-bed dwellinghouse, albeit smaller than the original property. There would therefore be no net loss in the number of dwellings on site as a result of the proposal. I therefore consider that the Council acted unreasonably in concluding that the appeal scheme would conflict with LP Policy COM1.
5. Whilst I understand the Council's concerns in respect of the present lack of residential occupation, the applicant sought to address this issue as part of the scheme now subject to this appeal. The application should have therefore been

¹ Paragraph: 030 Reference ID: 16-030-20140306.

² Paragraph: 049 Reference ID: 16-049-20140306.

³ Test Valley Borough Revised Local Plan DPD – Adopted Local Plan (January 2016).

assessed on this basis and, if necessary, the Council would have had to consider whether this issue could have been resolved by imposing a condition. However, the information submitted by the Council does not enable me to ascertain whether such a condition, rather than an obligation, was considered.

6. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated, and a partial award of costs is therefore justified in this instance, in respect of the unnecessary expense incurred by the applicant to contest the second reason for refusal.

Costs Order

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 Test Valley Borough Council shall pay to Mr T Sweetnam of Firvale Clinic, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Test Valley 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.

S Edwards

INSPECTOR