
Costs Decision

Site visit made on 28 January 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Costs application in relation to Appeal Ref: APP/P2114/W/19/3237165 316 Fairlee Road, Newport, Isle of Wight PO30 2JU

- 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 Barnett for a full award of costs against Isle of Wight Council.
 - The appeal was against the refusal of planning permission for a dwelling with parking.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant's application for costs relies to a substantial extent on the pre-planning advice given by the Council upon which the applicant relied in making her application. It is her view that the Council acted unreasonably in failing to follow the pre-application advice given, as well as previous decisions at 346 and 358 Fairlee Road and in raising objections not previously raised. In addition, the Council failed to show how the appeal decision referred to at Round House¹, 233 Fairlee Road justified refusing the appeal proposal.
4. Although pre-application engagement is encouraged by paragraph 39 of the National Planning Policy Framework (the Framework), informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent formal application, which must take account of all material factors. In this case these factors included a subsequent relevant appeal decision at Round House, 233 Fairlee Road.
5. Furthermore, the brief pre-application advice² given contains a clear caveat that states '*There are limits to the pre-application advice that can be given by officers. The pre-application advice service is not a passport to getting permission for unsuitable planning proposals. The final decision on planning applications is made by council members or senior officers. It can only be taken once a formal planning application has been received and consultations have*

¹ Reference APP/P2114/W/18/3195997

² Reference iw18/18/28287 dated 29 August 2018

been carried out with adjoining occupiers, those bodies which the council has a statutory requirement to consult and other interested parties. You should therefore be aware the council's officers are unable to give any guarantees about the decision that will be made on an application.' This highlighted that there is a level of risk inherent in making a planning application which the applicant was able to take into account prior to proceeding with her application.

6. Additionally, based on the evidence presented, it is not clear what level of information was put to the Council at the pre-application stage. I therefore have no firm basis to conclude that the informal advice given was directly in response to the same information that formed the appeal proposal.
7. In addition, neither party disputes that the findings of the Inspector in the subsequent Round House appeal decision were relevant to the consideration of the appeal proposal. As will be seen from my decision, I also considered that this decision was a material factor in concluding that the proposal conflicted with policy SP1 of the Island Plan, Isle of Wight Council Core Strategy (including Minerals and Waste) and Development Management Policies Development Plan Document, March 2012.
8. Moreover, the Council brought their views on the implications of the Round House appeal decision to the attention of the applicant³ shortly after the application was submitted, which enabled her to submit additional information as part of their planning application submission. This does not signal unreasonable behaviour on the part of the Council.
9. In its appeal statement and delegated report, the Council indicate how the Round House appeal decision caused them to review the pre-application advice given regarding the application of policy SP1 in relation to the appeal proposal. In particular, the circumstances of the location of the site outside of the defined settlement boundary established the "specific local need" requirement in policy SP1. Furthermore, the concerns raised by the Council in relation to character and design and living conditions were adequately substantiated by the Council in its delegated officer report. This identified the characteristics of the site and outlined the nature of the harm using the evidence submitted by the applicant and the Council's own observations. In considering the character and appearance of the area, the Council expressly set out in the delegated report why in their view, the circumstances of the appeal proposal differed from those at 346 and 358 Fairlee Road. Overall, I am satisfied that the Council has shown that it was able to substantiate its reasons for refusal.
10. The PPG advises that local planning authorities are required to behave reasonably in relation to the procedure and substance of the matter under appeal. Notwithstanding that the lists of examples given are not exhaustive⁴, on the evidence presented, the applicant has not shown that the behaviour of the Council fell within any of the examples listed nor that it amounted to unreasonable behaviour otherwise.
11. Consequently, I do not find that the Council's behaviour was unreasonable. Accordingly, the applicant was not put to unnecessary or wasted expense in testing the matter at appeal.

³ Paragraphs 1.2 & 1.3 Appellant's statement

⁴ Paragraphs 047 ID:16-047-20140306 & 049 ID:16-049-20140306

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Helen O'Connor

Inspector