



Costs Decision

Site visit made on 21 January 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2020

Costs application in relation to Appeal Ref: APP/K3605/D/19/3239715 5 Knowle Park, Cobham, Surrey KT11 3AA

- 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 Dean Sexton for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for a two-storey front extension, new front porch, single-storey rear extension, roof extension incorporating rear dormer windows and alterations to fenestration following partial demolition of existing house without complying with conditions attached to planning permission Ref 2018/0852, dated 29 May 2018.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour include preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
4. The planning application was made to regularise changes made to development that had previously been approved on the site. I have been provided with a copy of correspondence from the Council advising the applicant that an application for planning permission for the works was required as the development was ongoing and therefore could not benefit from permitted development rights. I note that the applicant disagrees with this, but there is no obligation to accept advice offered by the Council.
5. Whether or not the development would be lawful and so would not require express planning permission is not a matter for me to determine in the context of an application for costs associated with an appeal made under section 78 of the Town and Country Planning Act 1990. It would have been open to the applicant to apply to have the matter determined under sections 191 or 192 of the Act and there is a right of appeal associated with any such application.

However, the applicant chose instead to submit an application under section 73A of the Town and Country Planning Act 1990.

6. The application was determined by the Council's South Area Planning Committee where it was refused contrary to the officer recommendation. The appeal has been considered under the householder appeal procedure and so there was no opportunity for the Council to provide a statement or additional explanation for the reasons for refusal of the application.
7. Nevertheless, the Council's specific concerns with regard to the effect of the proposal on the character and appearance of the area and on the living conditions of neighbouring occupiers are clear from the minutes of the Committee meeting and the reasons given for refusal. These are matters of planning judgement, and are expressed in relation to the impacts of the development proposed that are held to be unacceptable with appropriate reference made to relevant policies of the development plan. Although as is clear from my decision I disagree with their position, from the information before me I do not therefore find that it was unreasonable for the Committee to adopt a contrary point of view to the officer recommendation.
8. The proposal was the subject of considerable local interest, and while the appellant has suggested that objections to the application were received from people who could not be affected by the development, the Council must still consider all representations made by third parties. There is also no compelling evidence to suggest that it was unreasonable or improper for the application to have been determined by the Committee rather than under powers delegated to officers.
9. I acknowledge that the application was not determined until some 7 months after it was originally submitted. However, from the information before me, much of the delay resulted from the Council seeking amendment to the plans to reflect the development being carried out. It was not unreasonable for the Council to request accurate plans, and I am not convinced that the Council sought to intentionally cause problems or delays with the application.
10. Some delay arose from consultation which took place on amended plans once they were received. However, the Council has a duty to provide a fair opportunity for interested parties to comment on proposals, including where proposals have been amended. This continues to apply regardless of the reasons for amendments or the fact that objections may have already been received and it was not therefore unreasonable for the Council to fulfil their obligations in this regard
11. The applicant has referred to costs incurred during the preparation and consideration of the application, including those related to the number of site visits undertaken by the Council, and I appreciate that the applicant may have experienced stress and worry over this time. However, the PPG advises that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage. The costs regime does not therefore extend to such costs which are unrelated to the appeal, or to indirect costs. Similarly, liability for the Community Infrastructure Levy is not a matter related to the appeal process.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Consequently, for the reasons given above, the application for a full award of costs is refused.

J Bowyer

INSPECTOR