
Costs Decision

Site visit made on 27 May 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 30th June 2020

Costs application in relation to Appeal Ref: APP/M1710/W/20/3246512 Shrover Lodge, Anmore Lane, Horndean, Waterlooville PO7 6HN

- 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 Donna Maplesden for a full award of costs against East Hampshire District Council.
 - The appeal was against the refusal of planning permission for alteration of existing field entrance and change of use of part of field to include the formation of new residential access roadway to afford alternative access.
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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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant contends that: the Council introduced information late and failed to present documents or justification in relation to it; the Council failed to present evidence to support its charge that the proposal would fail to conserve or enhance the rural character and appearance of the area; the Council failed to recognise that the appeal site does not lie within an area with special characteristics, and that therefore the tests of Policy CP20 of the East Hampshire District Local Plan: Joint Core Strategy 2014 did not apply; Council officers misdirected themselves by their attribution of weight to irrelevant matters; and that the Council dismissed as 'anecdotal cases' the highway incidents referred to by the applicant. The applicant therefore considers that planning permission should have been granted and that they should not therefore have been obliged to incur the costs of the appeal.
4. The PPG sets out that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. Examples of unreasonable behaviour which may result in an award of costs include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
5. The Council's delegated report set out some of the planning history of the site, dating back to 2015. The Council's appeal statement went further, setting out the history of the site to 1955. This included several other past decisions, not

only the one to which the applicant refers¹. The Council did not however refer to these pre-2015 decisions in its arguments, nor did it seek to infer that they had relevance to the appeal proposal. I am therefore satisfied that they were simply listed in the statement as background information and that the Council did not introduce them as fresh evidence. Consequently, it was not unreasonable behaviour that no further documents or justification were presented in relation to these decisions. In any event, the applicant did not seek to respond to this matter beyond a brief reference in their final comments on the appeal which are largely the same as in their costs application. As such, it has not been demonstrated that unnecessary or wasted expense was incurred in relation to this matter.

6. The PPG also sets out that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this 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; and failure to produce evidence to substantiate each reason for refusal on appeal.
7. The initial 'Site and Development' section of the Council's delegated report describes the site and the associated dwelling and surroundings, identifying it as being in an isolated, rural location. This rural location is referenced again in the subsequent assessment of the impact of the proposal on the scale and character of the local area. While this section of the report is brief, it is nevertheless apparent from the assessment and the wording of the reason for refusal that it was this rural character that the Council considered the appeal proposal would fail to conserve or enhance. The Council has therefore substantiated this aspect of its reason for refusal.
8. The applicant introduced images of other gates in the local area as part of their appeal submissions. I have found that one of these is seen in a different context to the appeal site and the other has significantly altered the character of the lane on which it is located, and that as such, they do not justify the harm that the proposal would cause to the character and appearance of the area. As such, while it would have been helpful for the Council to have explicitly addressed this information in its appeal statement, it was not unreasonable for it to take the view that the additional information did not change its original conclusion in respect of character and appearance.
9. The applicant suggests that the appeal site does not have any special characteristics as none are identified on the Proposals Map and it is not within an area subject to a specific designation. However, neither the wording of Policy CP20 or the supporting text set out that the policy applies exclusively to areas defined by those means. Therefore, the Council was not unreasonable in applying the tests of that Policy to the appeal proposal.
10. Turning to the issue of the matters considered by the Council, the PPG is clear that the scope of what can constitute a material consideration is very wide². As the proposal was for an alternative residential access for Shrover Lodge I do not consider that it was unreasonable for the Council to consider whether the

¹ Council ref. 34869 from 1999

² Paragraph: 008 Reference ID: 21b-008-20140306

land through which the driveway would pass was already in residential use, or formed part of the residential curtilage of that dwelling. Given that the applicant was not seeking to make a case that the site forms part of the residential curtilage of Shrover Lodge, the fact that the Council reached the same conclusion was not unreasonable. The use of that land could have been a factor in assessing whether there was a need for an alternative access for the dwelling, irrespective of whether it was a case pursued by the applicant. The previous applications and appeals for lawful development certificates were part of the evidence available to the Council in this regard.

11. The PPG sets out that it is for the decision maker to decide what weight is to be given to the material considerations in each case³. It was therefore for the Council to afford what it considered to be appropriate weight to the planning history of the site when exercising its planning judgement.
12. Turning now to the final issue, the Council discussed the information provided by the applicant about highway incidents near the existing driveway in its delegated report. It concluded that the limited accident data in the Highways Technical Note undermined the applicant's concerns that the existing access was dangerous. There is no compelling evidence before me that the Council did not have regard to all of the applicant's submissions when making its decision. While the applicant may consider that greater weight should have been given to the incidents referred to, that was a matter of planning judgement for the decision maker and does not constitute unreasonable behaviour by the Council.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified.

L McKay

INSPECTOR

³ Paragraph: 009 Reference ID: 21b-009-20140306