



Costs Decision

Site visit made on 3 September 2020

by Peter D Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2020

Costs application in relation to Appeal Ref: APP/Y3615/D/20/3250550 31 Millmead Terrace, Guildford, Surrey GU2 4AU.

- 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 and Mrs Mak for a full award of costs against Guildford Borough Council.
 - The appeal was against the imposition of conditions on planning permission Ref 19/P/02039 for creation of a retaining wall to front to create driveway including dropping kerb, replacement windows and doors and other changes to fenestration.
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Decision

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

Reasons

2. The *Planning Practice Guidance* 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. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The appellant has not sought to differentiate in this case but, from the costs application and advice in the *Planning Practice Guidance*, the application relates to a substantive matter namely the imposition of conditions which do not meet the tests set out in the *National Planning Policy Framework* (the Framework).
4. In the appeal decision letter I concluded that only Condition No 3 was necessary in part and directly related to the development applied for. Both conditions set out requirements which given the circumstances of this case were unreasonable. In particular this was because Condition No 3 was imposed as a pre-commencement condition when this could have been avoided and Condition No 4 required a change to a Traffic Regulation Order (TRO) and prevented occupation of an existing house, (which had already been occupied), until the TRO was amended.
5. I have been invited by the Council to conclude that Condition No 3 was not a pre-commencement condition as it did not prevent works commencing on the development nor require the applicants to secure any further approval from the Council. I set out in my appeal decision letter my reasons why I am not persuaded by this argument. Condition No 3 is worded in a manner which clearly would prevent commencement of development and which required further approvals to vary a TRO to remove the Permit Holders' parking bay before commencement of the development which in the circumstances would

be unreasonable. If the Council intended to convey something different then the wording of the condition is not precise. It therefore fails the tests.

6. The action of the Council in imposing conditions that failed to comply with the tests was unreasonable behaviour and led directly to the appellant appealing against the conditions. Had the conditions been worded appropriately they would not have necessitated an appeal and therefore the costs associated with the appeal constitute unnecessary expenditure.
7. The applicants in applying for an award of costs also refer to the fact that the Council did not comply with the procedure in respect of pre-commencement conditions set out in the *Town and Country Planning (Pre-commencement Conditions) Regulations 2018* requiring consultation over such conditions and the applicants' agreement in writing. However, whilst consulting on Condition No 3 may have resulted in concerns being raised sooner this is a procedural failing in the processing of the application. It does not of itself have a bearing on the application for costs.
8. For the reasons above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the *Planning Practice Guidance*, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Guildford Borough Council shall pay to Mr and Mrs Mak the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing the appeal statement; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Guildford 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.

P. D. Biggers

INSPECTOR