



Costs Decision

Site visit made on 17 August 2020 by Mariam Noorgat BSc (Hons)

Decision by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2020

Costs application in relation to Appeal Ref: APP/R3650/W/19/3243575 9 Brambleton Avenue, Farnham GU9 8QU

- 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 & Mrs Brindley for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for an erection of a dwelling with vehicular access from Hillary Road, together with associated works.
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Decision

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

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the costs application.

Reasons for the Recommendation

3. 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.
4. The PPG advises 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 refusing applications on vague, generalised or inaccurate assertions about the proposal's impact. Further, Councils are required to behave reasonably in relation to procedural matters at an appeal, for example by complying with the requirements and deadlines of the process.
5. In respect of the substantive grounds, the permission was refused by the Council's Development Control Committee contrary to the advice of the planning officer. From the video evidence provided, voting on the officer's recommendation was tied at 6-6 with the Chairman's casting vote, to refuse permission, being determinative. Some limited discussion then took place between officers and the Chairman which resulted in the motion that the application be refused on grounds of the impact on residential amenity, despite little of the preceding debate being dedicated to this issue. There was no specific indication as to which residents the development would impact upon, and the decision notice also did not identify the specific dwellings which would be unacceptably affected. This was only made clear at appeal stage within the

Council's appeal statement. This generalised and vague assertion amounts to unreasonable behaviour.

6. However, it is clear that the impact on the privacy of neighbouring residents was a reasonable grounds for refusing the application, and although the particular properties affected was not specified, this did not affect the application's ability to be refused for the reason it was. As such the expense in having to submit the appeal in relation to this reason for refusal was not wasted.
7. The applicant states the Council did not determine the application in a timely manner. The application was submitted in February 2019 and feedback from the Council was provided in June 2019. The Council does have an obligation to determine applications in a timely manner and the PPG advises that if the local planning authority will fail to determine an application within the time limits, it should provide the applicant with an explanation. The information submitted shows that rather than initially refusing the application, the Council sought to work positively with the applicant with allowing the scheme to be altered significantly to enable a more favourable outcome to be achieved. The applicant continued to work with the Council by submitting revised drawings through to September 2019 and the application was recommended for approval for committee.
8. Whilst I accept that the Council did not determine the application within the prescribed period, it can be seen that the Council sought to work with the applicant in a constructive manner in an attempt to see if the scheme could be amended so as to overcome their concerns, which it did in so far as officers were able to support the application. Further, there is a statutory remedy in the form of an appeal against non-determination that could have also been exercised by the appellant. For this reason, I consider that the Council did not behave unreasonably in this regard.
9. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. For this reason, and having regard to all matters raised, I recommend that an award for costs is unjustified.

Mariam Noorgat

APPEAL PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's report and concur that the application for an award of costs should be refused.

Andrew Owen

INSPECTOR