The Planning Inspectorate

Costs Decision

Site visit made on 24 August 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Costs application in relation to Appeal Ref: APP/W1715/W/20/3253609
Mole Cottage, High Street, Bursledon, Southampton SO31 8DL

- 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 Tony and Paula Brooks for a full award of costs against Eastleigh Borough Council.
- The appeal was against the refusal of planning permission for replacement dwelling.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.

3. The appellant sought to work constructively with the Council by seeking pre-application advice, both in relation the appeal scheme and an earlier application which was withdrawn. The appellant could have been forgiven for thinking that the proposal would receive officer support, given the comments received prior to submission of the second application. I therefore have some sympathy with the position they now find themselves in. However, the nature of the planning process is such that pre-application advice is provided on a without-prejudice basis and recommendations on applications are shaped by the consultation responses received.

4. It is unclear why the local planning authority sought to involve its Urban Design Officer on the second application, but for whatever reason it did and this led to a situation where there was a conflict with the views of the Built Heritage Consultant. The case officer was entitled to exercise her planning judgement having regard to the various opinions on the table, including those of local residents and the parish council. The delegated officer report sets out clearly the reasoning for the decision and this is supported by reference to relevant policies from the development plan. Whilst I can appreciate the appellant's frustration, there is nothing unreasonable in the way the Council handled the application. Given the uncertainties surrounding local opinion at the application stage, there can have been no guarantees that the application would have been approved in line with the informal advice given at pre-application stage.

5. In the event, I have found that the proposal would cause harm to heritage assets and the living conditions of the occupants of Yew Tree Cottage. It follows that the Council has not prevented or delayed development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations. The appeal was unavoidable and the expenses incurred in preparing evidence were a necessary part of the appeal process.

6. The appellant argues that there has been a failure to determine cases in a consistent manner. However, for the reasons set out in my decision, the extensions at Greyladyes and Hacketts are not directly comparable to the appeal scheme. The impacts in those cases were different and the Council was under no obligation to grant permission for the appeal scheme even if, as it is being alleged, the authority has previously interpreted its own policies loosely.

7. The Council's oversight in not requesting a preliminary ecological assessment for the first application is regrettable. However, it was not unreasonable to seek one in response to consultee advice on the second application. Based on my observations, I am satisfied that bat surveys were necessary in order to determine the likely impacts on protected species and any mitigation measures required. The appellant was unable to conduct surveys during the application process as it was outside of the relevant season. In those circumstances, it was reasonable for the Council to attach a refusal reason relating to this matter. The costs incurred in undertaking bat surveys in preparation for an appeal did not represent wasted expense.

8. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Robert Parker

INSPECTOR