



Costs Decision

Site visit made on 27 October 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2020

Costs application in relation to Appeal Ref: APP/X0415/W/20/3257572 Holly Cottage, Ballinger Road, South Heath, Bucks HP16 9QH

- 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 B Pecotic (Leo Homes Development Ltd) for a partial award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for erection of three dwellings, (two 4-bedroom and one 5-bedroom) each with a garage and amenity space. Retention of existing Holly Cottage in residential use, apart from demolition of its existing garage and replacement with a new garage at the rear of this property. Access to be obtained from the construction of a private drive connecting to Ballinger Road via the existing driveway serving Holly Cottage.
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Decision

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

Procedural Matter

2. The appeal form gives Chiltern District Council as the local planning authority. However, the planning application decision notice was issued by Buckinghamshire Council which was formed following the merger of a number of local authorities. The details in this decision notice reflect this change.

Reasons

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. This application claims unreasonable behaviour by the Council as its decision is partly based on erroneous information relating to garden sizes.
4. In its response, the Council concedes that the planning committee report and its appeal statement includes incorrect measurements for the proposed gardens. The first refusal reason is based on the development's impact on local character, particularly in respect of proposed plot sizes relative to existing properties. I am satisfied that such objections would have been raised by the Council irrespective of the reference to incorrect garden depth.
5. However, the second reason refers to harm by reason of the proximity of the nearest dwelling to 5 Lappetts Lane (No 5). I am told that members of the planning committee were verbally advised of the correct separation distances, yet the Council's appeal statement contests the appellant's submissions on garden dimensions and relies upon measurements now accepted as being

wrong. Therefore, the Council has made inaccurate assertions in its submissions about the distance between the closest dwelling and No 5.

6. The appellant has had to respond to the Council's incorrect claims regarding measurements and so I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A partial award of costs is justified to cover the expense incurred by contesting the Council's inaccurate assertions about the size of proposed gardens and its second refusal reason relating to the impact on the living conditions of occupiers of No 5.

Costs Order

7. 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 Buckinghamshire Council shall pay to Mr B Pecotic (Leo Homes Development Ltd), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's inaccurate assertions about the size of proposed gardens and its second refusal reason relating to the impact on the living conditions of occupiers of No 5; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the 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.

Jonathan Edwards

INSPECTOR