
Costs Decision

Site visit made on 22 October 2020

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 07 December 2020

Costs application in relation to Appeal Ref: APP/C3620/X/20/3248914 Routh, Charlwood Road, Horley RH6 0AJ

- 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 Nick Sherard for a full award of costs against Mole Valley District Council.
 - The appeal was against the Council's refusal to grant a lawful development certificate (LDC).
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The guidance indicates that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate its actions.
3. This costs application is concerned, in the main, with the Council having refused to enter into pre-application discussions and, in the applicant's view, being unresponsive and generally unhelpful.
4. S195(2) and (3) of the 1990 Act as amended refer to the Secretary of State's role on appeal as one of being satisfied that the local planning authority's (the Council's) decision is or is not "well-founded". In other words, the appeal itself is confined to the narrow remit of reviewing the LPA's decision. In this particular instance the Council considered that the applicant had failed to demonstrate that all or some of the activities could not be provided within the main house or the existing buildings. In support of its case the Council has taken the approach that the onus was on the applicant to prove his case, on the balance of probability, and not that the authority was required to rebut the applicant's claims.
5. In support of its stance the Council, at the application stage, cited appeal decisions where the appointed Inspectors had found against the respective appellants on this point, amongst others matters. The relevant planning context regarding whether or not a proposed outbuilding would be '*required for a purpose incidental to the enjoyment of the dwellinghouse*' is, in being a matter of fact and degree, one open to interpretation. In such circumstances,

providing the Council is able to amplify its case – which I consider it did in this instance – it was quite entitled to reach the decision it did. The fact that I found otherwise by taking a different approach does not necessarily mean that the Council behaved unreasonably.

6. With the main issue in the appeal being whether or not the Council's decision was well founded my assessment of the case must relate to the decision itself, not the reasons for it. It would clearly be wrong to grant a LDC where the evidence, taken as a whole, suggests that the matter in question is not lawful, even if the Council's original reason(s) can be shown later to be misplaced. Also, as I have mentioned, there are a number of factors involved which need to be weighed up.
7. In deciding this application for an award of costs I must decide whether unnecessary expense has arisen directly from any unreasonable behaviour. Further, unnecessary expense should relate only to the appeal process itself. Whilst I can appreciate why the applicant considered the Council behaved unreasonably – although I would, instead, term it unhelpful – I am also mindful that the applicant's supporting statement at the application stage was largely a matrix tick box exercise rather than a discussion of case law and more compelling representations relating to the individual circumstances of the proposal itself. On this basis, despite what might be seen as a rather less than objective approach, I am satisfied that the Council did not behave unreasonably and, on the evidence, it is not wholly surprising that an appeal ensued.
8. Accordingly, for the reasons given above, I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
9. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR