
Costs Decision

Site visit made on 8 January 2021

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2021

Costs application in relation to Appeal Ref: APP/M3645/W/20/3256736 Land adjacent to Shaw Road, Tatsfield

- 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 Gregory for a partial award of costs against Tandridge District Council.
 - The appeal was against the refusal of planning permission for development described as 'erection of residential dwelling as limited infilling within a village'.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance's (the PPG) section on appeals advises that, irrespective of the outcome of an appeal, 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. The applicant's application for a partial award of costs has been made on a substantive basis. The application contends that it was unreasonable for the Council to have included reasons for refusal relating to the development's adverse effect on the character and appearance of the area (the second reason for refusal [R/R]) and its locational sustainability (the third R/R).
4. In determining the appeal, I have concluded that the development would have an unacceptable effect on the character and appearance of the area, a matter warranting the withholding of planning permission. I therefore consider that the case made by the Council in respect of the second R/R has clearly substantiated its decision to refuse planning permission on the grounds of there being an unacceptable effect on the character appearance of the area. For the purposes of paragraph 49 I consider it was entirely reasonable for the second R/R to have formed part of the Council's decision, with that being something that has neither prevented nor delayed the proposed development. I therefore consider that the Council's inclusion of the second R/R has not resulted in the applicant incurring unreasonable or wasted costs in responding to this R/R in connection with his appeal.
5. With respect to the issue raised by the third R/R, in determining the appeal I have found for the applicant. That being on the basis of the Council failing to demonstrate that the occupiers of the proposed dwelling would experience a

level of accessibility to everyday services and facilities that would be appreciably different to the occupiers of the numerous other dwellings in Tatsfield, including Thistle Cottage a property immediately to east of the appeal site and for which the Council granted planning permission in August 2015. In determining the appeal, I have concluded that in accessibility terms the location of the proposed dwelling would be no less sustainable than Thistle Cottage, with there being no significant change in local or national planning policy justifying a different approach being taken by the Council with respect to the appeal development and Thistle Cottage. I therefore consider that the Council's reliance on the third R/R was misguided and the case made in defence of it by the Council has failed to substantiate its inclusion amongst the reasons for refusal.

6. I therefore consider that the inclusion of the third R/R was unreasonable when regard is paid to the second bullet point (substantiation of each R/R on appeal) in paragraph 49 of the PPG and that its inclusion resulted in the applicant incurring some unnecessary expense in making his appeal.

Conclusion

7. Having regard to the provisions of the PPG, most particularly paragraphs 028, 030, 032 and 049, for the reasons given above I conclude that while it was reasonable for the Council to have included the second R/R, the inclusion of the third R/R was unreasonable. The third R/R's inclusion has resulted in the applicant incurring some unnecessary or wasted expense in making his appeal, warranting a partial award of costs, but limited to the response relating to the third R/R.

Costs Order

8. 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 Tandridge District Council shall pay Mr Nick Gregory, the costs of the appeal proceedings limited to those costs associated with responding to the third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Tandridge District 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.

Grahame Gould

INSPECTOR