



Costs Decision

Site visit made on 17 November 2020

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2021

Costs application in relation to Appeal Ref: APP/C3620/W/20/3248118 The Chalet, Mill Lane, Newdigate, Dorking RH5 5AL

- 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 Ms C Young for a full award of costs against Mole Vale District Council Authority.
 - The appeal was against the refusal of removal of conditions 4 and 5 of application MO/2019/1857/CC for demolition of existing dwelling and erection of replacement dwelling.
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Decision

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

Reasons

2. 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.
3. The appellant indicates that an award of costs is sought on both substantive and procedural grounds. It is stated that Mole Valley District Council acted unreasonably in its assessment of the application and the imposition of the conditions. In particular that it has not been demonstrated that the removal of permitted development rights was necessary, and that the existing dwelling benefits from these rights.
4. The procedural element relates to the appellant's position that the Council failed to consider the planning history relating to the property's curtilage and that they took into account a hypothetical scenario for extensions which was not before them.
5. In effect all permitted development is a hypothetical scenario as it is development that may or may not occur in the future if the property has the rights intact. In my opinion it is reasonable for the Council to consider the impact of future extensions when considering a proposal for a replacement dwelling and whether it is necessary to impose conditions relating to permitted development rights. However, in line with the Framework they should only be restricted if there is clear justification to do so.

6. As set out in the appeal decision I have found that the imposition of the conditions was not justified in this case as they do not meet the conditions tests, and that the proposal is in compliance with the Local Plan.
7. Nevertheless, the appellant's ground for costs indicates that the Council erred in its consideration of the application based on their position that no residential curtilage has been established and the existing dwellings does not benefit from permitted development rights. This is all background information, and the application/appeal was not to determine the lawful use. As an application for a replacement dwelling, a new property, and potentially a new curtilage, is being established and therefore the Council could look at whether it was appropriate to restrict these rights. No doubt discussions during the application process on these aspects are likely to have been beneficial to both parties. However, the Council's reasoning for the conditions is that substantial extensions would cause material detriment to the character of the area and residential amenities of the locality. As such, even if the parties agreed on the matter of curtilage it would not have eliminated the need for the appeal.
8. Therefore, whilst I have found the reasons for the condition to be unnecessary in this case. I am satisfied that in relation to the grounds of the appellant's cost claim an appeal would still have been necessary, and the associated costs incurred.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

G Ellis

INSPECTOR