



Costs Decision

Site visit made on 9 April 2021

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2021

Costs application in relation to Appeal Ref: APP/M3645/W/20/3261214 Edgehill, Succombs Hill, Warlingham CR6 9JG

- 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 J Owens (Silverleaf Group) against the decision of Tandridge District Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing dwelling and the erection of two blocks containing a total of 17 apartments.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance ('the 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. The appellant considers that the Council has behaved unreasonably in both procedural and substantive terms. I have had regard to the appellant's submissions, including a Final Response which includes new documentation and thereby precluding the opportunity for the Council to respond or offer explanations.
3. In terms of delay, I appreciate that the applicant may have been reluctant to opt for non-determination when there appears to be a prospect of an approval by the LPA, but the expediency of that course of action is a judgement that they have to make. In this case there was substantial dialogue including extensive email trails between the appellant's agent and the Council and therefore options to review progress, or the absence of it.
4. As regards the decision to refuse permission, two reasons were given. These were clear and succinct and gave rise to the two main issues that I have identified in my Decision. The Council did not seek to obfuscate in its reasons for refusing the application or subsequently in this appeal.
5. As regards the effect of the development on the character and appearance of the area, essentially the Council was clear in referring to the substantial scale of Block 1 on this elevated site as the main basis for its concern. It was acknowledged that in terms of density 'per se', design and external materials, the development would be acceptable and additionally that there was no objection to Block 2 which was considered as proportionate to its setting.

6. Whilst I have concluded in the appellant's favour on this issue, I consider that as regards Block 1 the planning judgement is one of balance in weighing up how the scheme performs against the opportunities and constraints of this specific site and its location. And contrary to the tenor of the appellant's representations during the application and appeal processes, a perfectly respectable case can be made against the grant of a permission. Indeed, I note that the reasons for this were clearly explained in email correspondence, including with a councillor.
7. As in so many planning matters, the decision is one of a subjective judgement and there are no absolutes of right and wrong. In this case the judgement is one of balance and for this reason I am neither surprised nor critical of the fact that at one stage an officer's report was drafted in support of the application. Despite the understandable frustrations of applicants, officers can disagree with them and with colleagues, whilst Members often disagree with officers. This is part and parcel of the planning process and invariably when it happens it causes delay.
8. In particular, pre-application advice is given in good faith and deviation from it, whilst unfortunate, is in my view not normally unreasonable behaviour. I have noted the reference in the applicant's submissions to a costs decision that took the opposite view, but in most cases the information available on a scheme at the time of a pre-app is a fraction of that needed to properly evaluate a scheme and carry out due process. The pre-app is an opportunity to advise on policy and the principles of a development and is no substitute for detailed examination and evaluation.
9. On the second issue, the officers considered that the communal amenity area could be improved and in the absence of minimum standards this is also a subjective matter. In the event, I consider this approach was justified by the 'Wheatcroft plans' which were a significant improvement. Moreover, to the extent that an application is likely to be refused on one issue, in this case the issue of character and appearance, it is not normally considered by LPAs to be expedient to seek amendments on other matters.
10. In summary, I am of the view that in the particular circumstances of this case the decision to refuse the application is within the scope of planning judgement that can be regarded as reasonable, rather than falling within the overall thrust and examples of unreasonable behaviour in the PPG. As regards the delay, this was a contentious scheme and there were unavoidable changes in case officers which contributed to the difficulties. Certainly the Council's handling of the application could have been better, but on balance I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.
11. The application for an award of costs is therefore refused.

Martin Andrews

INSPECTOR