



Costs Decision

Site visit made on 8 June 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2021

Costs application in relation to Appeal Ref: APP/L3625/W/21/3269591 47 Lumley Road, Horley RH6 7JF

- 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 Mercer Taylor for a full award of costs against Reigate and Banstead Borough Council.
 - The appeal was against the refusal of planning permission for "change of use of existing building from B8 (storage) to C3 (residential) to provide three residential units, plus associated works of alterations and construction".
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Decision

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

Reasons

2. The Planning Practice Guidance 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 claims the Council acted unreasonably in a procedural sense and a substantive sense, resulting in wasted expense arising from: their delay in not being able to proceed with the proposed development since 17 June 2020; seeking Counsel's opinion; submitting a second planning application; and pursuing the appeal.
4. Procedurally, the appellant claims the Council acted unreasonably in advising that they were seeking their own legal advice, which has not been presented, and that the Council were uncooperative during the application process, which was a resubmission of a previous application with accompanying legal advice following the refusal of the previous application. The appellant claims the purpose of the accompanying legal advice was to assist the Council in avoiding a claimed mistake made in the determination of the previous application.
5. Substantively, the appellant claims the Council acted unreasonably in failing to consider the totality of the development plan and undertake a fair balancing exercise. It is also claimed the Council failed to properly consider the weight to be given to a fallback scheme, which it is claimed would prevent a demonstrably better scheme from coming forward in favour of a more harmful one. The appellant also claims the Council have failed to substantiate their reasons for refusal during the appeal process.

6. The Council refer to the officer report prepared prior to their refusal of the planning application and claim it shows all relevant issues and development plan policies were identified and discussed and conclusions drawn on each issue. The Council claim the officer report made an assessment of the weight that should be attached to the fallback position and it was concluded that the proposal would result in a form of development which would be materially worse than the fallback scheme. It is also claimed the officer report substantiates their reasons for refusal and that because no additional issues arose during the appeal process, there was no need for the Council to submit a separate appeal statement.
7. Procedurally, I have seen no evidence of the Council acting unreasonably. The appellant has referred to the Council acting in an uncooperative manner during the application process and a previously refused planning application, but no evidence of those actions have been presented and they do not form part of the appeal process. The Council were under no obligation to submit an appeal statement as part of the appeal separate to their officer report.
8. The officer report shows that all relevant development plan policies were identified along with what the Council considered to be the main issues. With the exception of the appellant's claims in respect of an improvement to the area in terms of noise and disturbance, all of the issues raised in the appellant's initial planning statement were discussed and compliance with parts of the development plan noted.
9. The Council took account of existing noise complaints and concluded the proposal would not result in noise or disturbance over and above that generated by the current use, but they did not make any assessment as to whether there would be an improvement in noise and disturbance. Instead, they considered the proposal would result in an intensification of the use of the site in terms of people attending or living within the site and a reduction in the number of vehicle movements, which would not conflict with the development plan.
10. The conclusion of the officer report explains that the benefits of providing one additional dwelling compared to the fallback scheme would not outweigh the harm that would be caused to the future living conditions of the occupants of that additional dwelling and that the benefits of providing three dwellings did not outweigh the environmental harm to the character of the area. The officer report identified harm that would be caused to the character of the area through the delivery of housing that failed to accord with Policy DES1 of the Council's DMP.
11. I have found in favour of the appellant in respect of the improvement the proposal would make to the area through the likely changes in noise and disturbance and the Council should have considered whether there would be any such improvement and weighed the benefits against the harm they identified. It was unreasonable for the Council to fail to assess whether there would be any benefits in this regard resulting from the likely changes in noise and balance the benefits against the harm. The officer report suggests they may have concluded that there would be no benefits arising from the changes in noise, but this is not clear.
12. The Council considered all other benefits resulting from the proposal and stated that they did not outweigh the main planning issues discussed within the officer

- report. Although the conclusion of the report does not explicitly state the development plan as a whole was considered, reference is made to section 38(6) of the Planning and Compulsory Purchase Act elsewhere, and it can be seen that an assessment was made as to which parts of the development plan were relevant and whether the proposal conflicted with those parts.
13. The officer report considers the fallback scheme, noting the proposal would result in a similar arrangement for each of the two dwellings approved in that case and concludes the proposal would not result in a form of development which is, in terms of its impact, broadly similar or better than the fallback position, but results in a form of development which would be materially worse. The appellant disagrees with the Council's opinion on these points but has failed to provide sufficient details of the fallback scheme to substantiate their arguments on these points. The Council adopted the correct approach in this regard and did not act unreasonably in concluding the proposal would result in more harm than the fallback scheme.
14. I therefore find that the Council acted unreasonably in failing to consider the benefits of the proposal in terms of the likely changes in noise. The appellant had presented these benefits in paragraph 6.1.19. of their planning statement and referred to these benefits at points 43 and 57 of Section 6 of their appeal statement, which the Council failed to address. However, this unreasonable behaviour has not resulted in any unnecessary expense on the part of the appellant, whose appeal submissions only briefly address this.
15. The appellant has referred to delays in not being able to proceed with the proposed development since 17 June 2020, seeking Counsel's opinion and submitting a second planning application, but all of these expenses follow the refusal of a previous application which is not before me and does not form part of this appeal. The application the subject of this appeal was dated 24 September 2020, post-dating the Counsel's opinion which refers to a different planning application and officer report. The Counsel's opinion was not disregarded by the Council, who refer to it in their officer report that forms part of this appeal.
16. The appellant has incurred costs in pursuing this appeal, but the Council's unreasonable behaviour which I have identified did not result in any wasted expense in that process, as the appellant failed to demonstrate the proposal would accord with the development plan or that any material considerations indicate planning permission should be granted. The appellant chose to focus their appeal on their assessment of the fallback scheme as having worse impacts than the proposal, which they considered outweighed any harm caused by the proposal and its failure to accord with the development plan, but they failed to sufficiently substantiate those claims.

Conclusion

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, an award of costs is not justified.

L Douglas

INSPECTOR