Costs Decision

Site visit made on 29 June 2021

by James Blackwell LLB (Hons)

an Inspector appointed by the Secretary of State

Decision date: 20 July 2021

Costs application in relation to Appeal Ref: APP/W1715/D/21/3272001
Lechlade Cottage, Botley Road, Fair Oak SO50 7AP

- 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 Ian Watson for a full award of costs against Eastleigh Borough Council.
- The appeal was against a refusal of planning permission for an annex.

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 applicant's application for costs turns on a number of points, namely an alleged inconsistency in the Council's approach when determining applications of a similar nature and also an alleged failure of the Council to utilise conditions to overcome certain reasons for refusal.

4. In terms of the Council's consistency of approach, the appeal site can be distinguished from examples of similar annex accommodation which have been approved by the Council in its administrative area. The appeal site is located within an identified local gap between Fair Oak and Horten Heath, where there are more stringent controls over development to help preserve the separate identity of these settlements. The examples of similar annexes which have been provided by the applicant are located in areas with a greater level of built form, where the preservation of local gaps is not at issue. It was therefore reasonable for the Council to treat this application differently to its assessment of applications for similar annex accommodation elsewhere in its area.

5. The appellant also contends that the Council's assessment of the proposal with regard to its impact on the character and appearance of the area and its impact on residential amenity is inconsistent, due to its conclusions reached on whether the annex is tantamount to a new dwelling. The Council's comments relating to the possibility of the annex being used as an independent dwelling primarily relate to its size. Due to its considerable footprint, if a kitchen were to be installed in future, it would *be possible* for the annex to be used as a separate dwelling, and consequently there is a risk of subdivision of the appeal

site in future. The Council contends that subdivision would be inconsistent with the pattern of development in the area and would harm the character of the area. This conclusion is theoretical and does not equate to the Council saying that the annex would be a separate dwelling, just that it could become one in future. On this basis, it's still reasonable for the Council to assert in its consideration of any potential impact on residential amenity, that the annex would not actually be a separate dwelling, and that the usual standards of assessment therefore need not apply. I do not find the Council's approach to these separate issues illogical or unreasonable.

6. Turning now to conditions. The Council concluded that the development would harm the character and appearance of the area due to its size, scale and projection forward of the building line, particularly in the context of its location within an identified local gap. On the Council's evidence, this conclusion would be unchanged by the retention of the boundary hedge. It therefore follows that the Council would not consider a condition to ensure retention of the hedge, as it did not consider that this would provide adequate mitigation against the impact of the development. Similarly, even with a condition ensuring the annex remained ancillary to the main dwelling, the Council's evidence suggests it would still consider the development contrary to the development plan, due to its siting within a local gap.

7. For the reasons set out above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in this instance.

James Blackwell

INSPECTOR