



Costs Decision

Hearing Held on 20 July 2021

Site visit made on 21 July 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2021

Costs application in relation to Appeal Refs: APP/Y3615/C/21/3272739 and APP/Y3615/C/21/3272740

Land at Heath Cottage, Cuttmill Road, Shackleford, Godalming GU8 6BJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Guildford Borough Council for a partial award of costs against Mr and Mrs Boag.
 - The hearing was in connection with an appeal against an enforcement notice alleging the erection of three unauthorised extensions.
-

Decision

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

Procedural Matters

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs (in this case the Council) to incur unnecessary or wasted expense in the appeal process.
3. The Council submitted a costs application in writing the day before the Hearing. The appellants were able to respond in writing, so there is no need to repeat them in full. I heard the Council's rebuttal orally. The application is for a partial award of costs against the appellants.
4. In summary, the Council contends that the appellants have acted unreasonably by failing to provide evidence in support of their case in a timely manner. No substantial evidence was submitted until Statements were exchanged in June 2021, and later a Profile and Care Needs Assessment (the 'PCN Assessment') submitted at Final Comments stage. As a result, the Council has incurred unnecessary expense in instructing an external Occupational Therapist late in the day, as well as additional time spent reviewing the various documentation and preparing its responses, and instructing a Barrister to advise and help prepare the Costs application.
5. The appellants contend there is no evidence that the Council had to alter its case or approach following the submission of the PCN Assessment. The Council repeatedly requested more information during the appeal process threatening costs, yet when it has been provided with the additional information the Council still apply for costs. The appellants conclude that there has been no inappropriate behaviour. The fact the Council was able to respond to the PCN Assessment shows it was not disadvantaged. Therefore the Council's cost claim is without basis and should be dismissed.

Reasons

6. The PPG gives an inexhaustive list of examples of unreasonable behaviour by appellants on procedural grounds, which includes introducing fresh and substantial evidence at a late stage necessitating an adjournment; or extra expense for preparatory work that would not otherwise have arisen; or only supplying relevant information at appeal when it was requested, but not provided, at application stage.
7. Costs can include the time spent preparing for an appeal and attending the event, and the use of consultants to provide detailed technical advice. Cost applications can also relate to events before the appeal. The PPG advises that Inspectors can take into account the behaviour and actions at the time of the planning application, when considering whether or not costs should be awarded.
8. From submitted emails it is clear that the appellants, through their agent, made attempts to communicate and co-operate with the Council during the determination of the application and there was an exchange of correspondence. The Council wanted medical and expert evidence to justify the scale and extent of the extensions. The Council was reasonable in this request, in light of the restrictions on new development in the Green Belt where considerations amounting to very special circumstances need to exist, and as I have myself found in my decision.
9. A response from the Principal Planning Officer stated that the Council had all the information it needed to make their assessment [of the application]. It is not unreasonable that this response led the appellants to believe nothing further needed to be submitted for their application.
10. In terms of preparing for an appeal, Annex J of the Procedural Guide: Planning appeals–England (the Procedural Guide) advises appellants to review the documents and arguments identified during consideration of their application, especially any correspondence from interested people and planning officer reports/communications, and that any arguments in reaction to these documents should therefore be included in their full Statement of Case. They should also respond to the reasons for refusal set out in the local planning authority's decision notice.
11. It is, therefore, not unreasonable for any party to seek to resolve a reason for refusal through the appeal process and to submit additional information to do so. The appellants submitted some additional medical information at the exchange of Statements and later a PCN Assessment at Final Comments stage. In terms of the documents themselves, I find the appellants did not act unreasonably in submitting them to support their case.
12. However, the Procedural Guide makes clear that all parties should follow good practice and behave reasonably, and meet the statutory timetables to ensure that no-one is disadvantaged and the appeal can be processed efficiently. Keeping to the timetables is fundamental and everyone is expected to comply with them.
13. From the dates of the medical information submitted at Statement stage, it is clear the appellants had had this information for some time and could have submitted it earlier with the Grounds of Appeal or indeed during determination

of the planning application. I find this constitutes one of the examples of unreasonable behaviour listed in the PPG.

14. The appellants' PCN Assessment contained detailed and new information about the son's condition, which clarified some matters the Council had been unaware of until that stage. Whilst the appellants say they commissioned the PCN Assessment in advance, they did not give any indication to the Council that such a report was being commissioned or would be forthcoming. This supply of substantial new information late in the appeal stage also amounts to unreasonable behaviour.
15. My attention now turns to whether the appellants' unreasonable behaviour I have identified has resulted in unnecessary or wasted expense to the Council. Both tests need to be satisfied before an award of costs can be made.
16. If the appellants had submitted the medical documents and PCN Assessment earlier in the appeal timetable, or indeed during the determination of the planning application, I consider it likely that the Council would have still sought professional advice to enable it to respond. Whether any costs could have been saved by the earlier submission of evidence cannot be gleaned with any level of clarity on the information before me.
17. The use of a Barrister was entirely the choice of the Council and a choice unlikely to have been influenced by the appellants' conduct. Having made that choice, it was a cost incurred regardless of the late submission of evidence. Moreover, the costs application could easily have been made without the assistance of a Barrister.

Conclusion

18. Whilst I find the appellants have acted unreasonably by submitting substantial new evidence late in the appeal stage, albeit within overall appeal deadlines, I am not satisfied that this caused the Council to incur unnecessary or wasted expense.
19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG and alleged by the Council, has not been demonstrated. An award for costs is therefore not justified.

K Stephens

INSPECTOR