
Costs Decision

Hearing held on 1 December 2021

Site visits made on 20 September 2021 & 1 December 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2021

Costs application in relation to Appeal Ref: APP/L3625/W/20/3257176 1 & 2 Rosebank Cottages, Cockshot Hill, Reigate RH2 8BQ

- 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 Matthew Arnold of The Oakwood Group for a full award of costs against Reigate & Banstead Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of the two existing dwellings and the erection of ten new semi-detached houses, together with associated car parking, boundary planting and the provision of a vehicular access off Cockshot Hill.
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Decision

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

Reasons

2. Parties in appeals normally meet their own expenses. The Planning Practice Guidance advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. This application is made for a full award of costs on the basis that the Council's approach towards the application was unreasonable. It is contended that the reasons for refusal relied upon by the Council are not sufficient and supported by evidence, to the extent that the appeal should never have been necessary.
4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the approach to take when determining a planning application. That is to establish whether the proposal complies with the development plan taken as a whole and if it does not to establish whether there are material considerations which indicate a decision otherwise than in accordance with the development plan.
5. In this particular case, the Council was correct to treat the locally listed building on the site as a material consideration. This building was added to the local list during the application process, following a request by a local civic society. Although the appellant disagrees with the decision, I have taken no issue with the manner in which the listing process was approached or its outcome.
6. The wording of the first refusal reason suggests that the scheme's acceptability hinges upon evidence being presented to demonstrate that the total loss of Rosebank Cottages cannot be avoided. The appellant can be

forgiven for feeling aggrieved, given that such evidence had already been provided. Whether or not the Council determined the application in the belief that development of the site was still possible without demolishing the building is unclear, but it conceded at the hearing that partial demolition was inevitable in order to provide access to the rear of the site. The authority's approach towards this matter was confused and its reason for refusal misleading.

7. In the event, the Council did apply its own policy¹ and that of the National Planning Policy Framework, which is to make a balanced judgement, where proposals affect non-designated heritage assets, having regard to the scale of any harm or loss and the significance of the heritage asset. This is the correct policy test and not simply whether demolition is unavoidable.
8. The other strand to the Council's argument is the impact of the replacement scheme on the character and appearance of the area. That is a subjective assessment. The circumstances of this particular case, notably the verdant context and site topography, are such that it is impossible to make direct parallels with the other developments which have been drawn to my attention. Although I disagree with the Council on the issue of density, this does not make its judgement unreasonable. The development would be built at greater density than nearby residential streets but the local planning authority was entitled to draw its own conclusions in relation to whether this would be harmful.
9. The Council made a clear error in not taking account of the appellant's Arboricultural Report. This was unfortunate, but the mistake was rectified promptly and prior to the appeal being lodged. As such, the appellant has not been put to unnecessary or wasted expense in dealing with this matter.
10. Drawing the threads together, the appellant makes out that the application was clear-cut, and that there was an overwhelming case to grant planning permission, having regard to the development plan, national policy and other material considerations. I disagree with that position. The decision turned on judgements relating to heritage significance and the effects of the scheme on the character and appearance of the area, and the outcome of a balancing exercise to determine whether any harm would be outweighed by the benefits. It was not unreasonable for the Council to arrive at a stance that was contrary to that being advanced by the appellant. The Officer Report provides adequate reasons for the decision and these are linked to development plan policy. It follows from my decision to dismiss the appeal that the appellant's evidence was a necessary part of the appeal process. Based on the information before me, including the detailed chronology of events, it is difficult to see how the appeal could have been avoided.
11. Accordingly, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated and an award of costs is not justified. For the reasons given above, I refuse the application for an award of costs.

Robert Parker

INSPECTOR

¹ Policy NHE9 of the Reigate & Banstead Local Plan Development Management Plan (2019)