

Costs Decision

Site visit made on 17 January 2022

by S Edwards BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2022

Costs application in relation to Appeal Ref: APP/R3650/W/21/3277775 1 and 2 Old Dairy Cottages, Hillside Farm, Tilford Road, Churt, Farnham GU10 2LN

- 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 & Mrs T Hall for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing bungalows and erection of two detached cottages.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance¹ (the PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG adds that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.
3. The applicant considers that the Council is in this instance unable to substantiate the reasons which have led to the decision to refuse planning permission. It is argued that the Council has acted unreasonably in relying on reasons for refusal which do not stand up to scrutiny. As set out within the PPG, these are circumstances which may lead to an award of costs against local planning authorities.
4. A decision made by the Planning Committee contrary to the Case Officer's recommendation does not in itself constitute unreasonable behaviour. Members are entitled to reach a different decision, as long as they do so whilst relying on substantive planning grounds. In this instance, members took the view that the proposed development would unacceptably harm the living conditions of neighbouring residents.
5. This is, to some degree, a subjective assessment, but limited information has nevertheless been submitted to substantiate this view. The Council has failed to demonstrate how the proposal would cause unacceptable harm to the living

¹ Paragraph: 030 Reference ID: 16-030-20140306.

conditions of neighbouring residents, simply by virtue of the proposal's proximity to the boundary shared with no 2 Arvon Cottage.

6. The Council's assessment is unduly reliant upon vague and generalised assertions in respect of the proposal's impact. Having regard to the available evidence, I find that the refusal of planning permission on such grounds constitutes unreasonable behaviour. Extra costs were incurred, as the applicants were faced with the unnecessary expense of lodging the appeal to contest the first reason for refusal.
7. Turning to the second reason for refusal, the Council took the view that the extensive areas of glazing would give rise to harmful levels of light pollution, thus detracting from the landscape character of the Surrey Hills AONB. The site was viewed by the Council as a remoter location, with darker skies, where proposals causing light pollution should be resisted, as per the requirements of the Surrey Hills AONB Management Plan.
8. Although I have reached a different view on this matter for the reasons detailed in my Decision Letter, there appears to be no definition of what constitutes a 'remoter location' in the context of the AONB. I accept that this is a matter of planning judgment, having regard to the particular circumstances of the case. Despite the site's proximity to other properties, Committee Members were entitled to come to the view that that this represents a remoter location, where dwellings with large of areas of glazing could increase levels of light pollution, thus causing harm to the AONB. Furthermore, the Council has explained, within its submissions, the reasons why it was felt that the matter could not be appropriately addressed by imposing a condition. Accordingly, I find that the Council did not act unreasonably with regard to the second reason for refusal.
9. For the reasons detailed above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated, and a partial award of costs is therefore justified in this instance, in respect of the unnecessary expense incurred by the applicants to contest the first reason for refusal.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Waverley Borough Council shall pay to Mr and Mrs T Hall, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Waverley Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S Edwards

INSPECTOR