



Costs Decision

Site visit made on 18th February 2022

by Megan Thomas Q.C. Barrister-at-Law

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 12 April 2022

Costs Decision in relation to Appeal Ref: APP/M3645/W/21/3280579 Land south of 5 Sylvan Close, Limpsfield, Surrey RH8 0DX

- 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 Simon Hughes for a full award of costs against Tandridge District Council.
 - The appeal relates to the refusal of planning permission for the construction of a new detached dwelling, garage, driveway and highway crossover.
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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 PPG details examples of unreasonable behaviour by the local planning authority including failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions unsupported by any objective analysis, and it also gives examples of procedural failures which may lead to a party incurring wasted expenditure.
4. In this case the appellant is seeking a full award of costs on the basis that in his view the appeal could have been avoided and therefore the costs of the appeal not incurred at all. There are a number of factors which the appellant considers support his case which can be summarised as a lack of engagement by the Council to explain concerns about the planning application prior to issue of the decision, that the reasons for refusal were too vague, refusal to engage in any informal discussion since the decision to explain the concerns and offer any pointers for a revised scheme that would address them, and fourthly no opportunity to engage in further formal pre-application discussions given suspension of that service by the Council.
5. Dealing first with the assertion that the Council's reasons for refusal were too vague or inaccurate, there were two reasons for refusal, one alleging harm to the character and appearance of the area and one relating to the proposed garage parking spaces providing sufficient space as parking spaces. The Officer Report set out the concerns the Council has in relation to detriment to the

character and appearance of the area and it has set out its concerns in respect of space for parking vehicles, having consulted the Highways Authority. The reasons for refusal on the notice of decision were not ambiguous or unclear. The fact that I have come to a different conclusion about the issues is not relevant. Professional planning judgements can differ on matters such as harm to the character and appearance and adequacy of space in a development for a particular purpose, but both judgments can be valid. In this case, I do not consider that the Council failed to properly substantiate its case, its views were on the spectrum of what was reasonable. It has not acted unreasonably in refusing planning permission.

6. I turn next to the appellant's articulation of the Council's procedural shortcomings. The appellant's planning application was refused by a notice of decision dated 2nd March 2021. He made contact with the Case Officer on 23rd February 2021, to see if he had reviewed the application. On 24th February 2021 the Case Officer responded that he was going to refuse the application and that no amendments under the submission would change his mind. On 28th February 2021 Mr Hughes attempted to contact the Officer with a very detailed email explaining all the benefits of the revised design, together with examples of similar properties in the immediate local area that in his view demonstrated that there was no precedent and to also understand the reasoning in reaching his conclusion. No response was received.
7. On 1st March 2021 a further email was sent to the Case Officer asking for an explanation, so that Mr Hughes could either address his concerns and make some amendments or understand what he would need to do to change under a resubmission. The Officer responded on 1st March 2021 stating, "Unfortunately I do not have access to a work phone and my mobile is being used by my children for home schooling purposes". The Officer also said that he had discussed the case with the Head of Planning. Mr Hughes tried to contact him again on 1st March 2021 asking for some further feedback because he considered that his reasons very vague and ambiguous. No response was received, other than stating that due to work pressures he was unavailable. Four further emails were sent to the Council on 1st and 2nd March 2021 enquiring if anybody was available to discuss the application and whether a resolution could be found, but they were unable to help.
8. However, the Case Officer did provide comments regarding the scheme in his email dated 24th February 2021 that the proposal would be "substantially bulkier than the dwelling approved". There was engagement with the appellant albeit not to the level that the appellant had previously experienced or considered was acceptable. The fact that the Case Officer's opinion of the development, prior to the determination of the planning application, was not swayed or altered by Mr Hughes' emails of 28th February 2021 and 1st March 2021 does not constitute unreasonable behaviour on behalf of the Council. Furthermore, it cannot be said with certainty that the behaviour complained of has led to the appeal being necessary. The costs of the appeal would have had to have been incurred in any event. I do not consider that the level of engagement by the Council has led to wasted costs being incurred.
9. There are also allegations of refusal of the Council to engage in any informal discussion since the decision in order to explain the concerns and offer any pointers for a revised scheme, and the lack of opportunity to engage in further

formal pre-application discussions given suspension of that service by the Council. Whilst it is an undesirable step, the Council explains why it had no option but to suspend the pre-app and post-app engagement service with potential applicants and applicants. It had done this by 7th April 2021. This service is not a statutory requirement for a planning department and I do not find the temporary suspension of it an unreasonable step for the Council to have taken in the particular circumstances pertaining at the time. It is entirely understandable why Mr Hughes was frustrated but in the context of his costs application it was not unreasonable conduct on the part of the Council and it cannot be said with certainty that even if it was it would have led to the appeal being avoided.

10.I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Megan Thomas Q.C.

INSPECTOR