
Costs Decision

Site visit made on 22 June 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2022

Costs application in relation to Appeal Ref: APP/C3620/W/21/3284413 35/35A Bridge Street, Leatherhead, Surrey KT22 8BN

- 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 Koniko Limited for a full award of costs against Mole Valley District Council.
 - The appeal was against the refusal of planning permission for development comprising removal of topsoil and restoration of ground levels at southern end of site together with the erection of 5 No. dwellings following demolition of the existing building detached storage/office building.
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Decision

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

Reasons

2. 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 process¹.
3. In essence, the costs application is that it was unreasonable for members to reject the officer recommendation to grant planning permission because of vague concerns about the proposal's impact. In addition, that officer advice to members about the presumption in favour of sustainable development, the so called 'tilted balance', was incorrect. The Council was given an opportunity to comment on the costs application. I have taken comments received into account in my decision.
4. The PPG states that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs².
5. The Council does not operate a formal system of Development Management Committee (DMC) site visits. This is not unusual and there is no requirement for it to do so. There is no evidence that any member visited or viewed the site by other means. However, members had the benefit of a detailed officer report (informed by an officer site visit), application plans and documents and site photographs. They were also advised by officers orally at the DMC meeting.
6. After debate, and despite a narrow split vote, a majority of members were entitled to take an alternative view (to officers) on living conditions and make

¹ PPG paragraph ID: 16-030-20140306

² PPG paragraph ID: 16-050-20140306

the decision that they did. This was with due regard to the officer recommendation and the objective information before them, which I consider was adequate for that purpose. The member decision was not, therefore, 'based purely on subjective judgement' or a whim. The reason for refusal refers to matters of acknowledged planning interest and to relevant local and national planning policy. The Council submitted a statement at appeal stage and it has justified the reason for refusal.

7. It is not, therefore, surprising or unexpected that the member driven reason for refusal and the Council appeal statement contradict equivalent passages of the officer report. These inconsistencies are neutral factors in my decision. I appreciate that the applicant does not agree with the member's decision or the reason for refusal, but the applicant's grievance here is, essentially, a difference of planning judgement. My appeal decision reconciles this matter.
8. The Council accepts that officers gave incorrect advice to members about paragraph 11 of the Framework and the presumption in favour of sustainable development. I have no reason to doubt that this was anything other than a genuine mistake. Nonetheless, officers provided information that was manifestly inaccurate and this in itself amounted to unreasonable behaviour³.
9. However, a majority of members shared legitimate planning concerns about certain aspects of the proposal. Even if members had been correctly advised about the application of paragraph 11 of the Framework, these are two separate, albeit related, matters. Accordingly, there is no certainty that but for the officer mistake members would have been bound to grant planning permission.
10. Consequently, these circumstances have led the applicant to decide to pursue the matter through the appeal process. Parties in planning appeals normally meet their own expenses⁴.

Conclusion

11. For the reasons given above, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. A full award of costs is not therefore justified, nor is a partial award for the same reasons.

Robin Buchanan

INSPECTOR

³ PPG paragraph ID: 16-047-20140306

⁴ PPG paragraph ID: 16-028-20140306