
Costs Decision

Hearing Held on 29 November 2022

Site visit made on 29 November 2022

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Costs application in relation to Appeal Ref: APP/M3645/W/22/3302129 34 Kings Cross Lane, South Nutfield RH1 5NU

- 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 Nigel Greenhalgh of Village Developments for a full award of costs against Tandridge District Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for seven detached and semi-detached chalet bungalows to the rear of the existing property at 34 Kings Cross Lane with access to be determined and all other matters reserved.
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Decision

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

The submissions

2. The costs application was submitted orally at the hearing as were the Council's response and the Applicant's final reply.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. It adds that examples of unreasonable behaviour by local planning authorities include:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - failure to produce evidence to substantiate each reason for refusal on appeal; and
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The first putative reason for refusal relates to character and appearance. It appears that a hedge has grown along part of the boundary of the site along

the existing access track. However, the visibility of the scheme from the street was addressed during the hearing and in any event, would not alter the Council's concerns regarding the effect of the scheme on the pattern of development. Therefore, even if the Council had behaved unreasonably by not considering the hedge when assessing the application, since this would not have addressed the overall putative reason for refusal, the matter has not resulted in wasted expense in the appeal process.

6. A development to the rear of a property known as Little Hundith roughly opposite the site was completed since the previous appeal decision. Although a direct comparison was not made in the Council's Statement, the point was addressed by the Council during the hearing. In any event, the matter would not have altered the putative reason for refusal which the Applicant would have needed to address at appeal.
7. The application was made in outline with only matters relating to access being sought for approval. Proposed layout and elevation drawings were submitted with the application. While the drawings do not indicate whether they are submitted on an illustrative basis, the Council's appeal statement of case refers to the layout as being indicative. Although scale is a reserved matter, since the description of development specifies chalet bungalows, the Council did not behave unreasonably by making an assessment in this respect.
8. The Council did not directly refer to the Housing Delivery Test Action Plan September 2022 (HDTAP) in their statement of case. However, this matter was discussed during the hearing. Furthermore, while I note the criteria set out in the Interim Policy Statement for Housing Delivery, it also requires that proposals are in accordance with the Council's development plan. As such this matter would not have altered the Council's overall assessment of the scheme. Therefore, even if the Council behaved unreasonably by not having regard to the document during the application stage, the Applicant would still have incurred expense during the appeal.
9. The second putative reason for refusal relates to the living environment of future occupiers with regard to private amenity space. The Statement of Case makes clear that the layout was assessed on an indicative basis and the analysis of the private amenity areas was made against criteria 8 and 9. Therefore, even if the Council considered that there was no conflict with criterion 7 of the Policy, this would not have altered the reason for refusal. Furthermore, the Council stated during the hearing that they consider that any reasonable layout of the proposed number of dwellings would have the same effect. As such, although the Council has assessed the submitted layout of the scheme, this appears to have been done on an indicative basis. Therefore, the Council has not behaved unreasonably in this respect.
10. Accordingly, I have found that the Council had reasonable concerns about the impact of the proposed development which justified the first and second putative reasons for refusal, albeit I have come to a different view with respect to the second putative reason for refusal. The Applicant had to address those concerns and the evidence of third parties in any event.
11. The third putative reason for refusal relates to the living conditions of neighbouring occupiers of No 34 Kings Cross Lane with regard to outlook. The Council based their assessment of this matter on the assertion that the site area has been increased in size southwards compared to the previous scheme.

12. However, from the evidence, the red line boundary appears to be unchanged from the previous scheme, encompassing the whole site up to the highway. The reason for refusal was therefore based on a specific layout when this matter was for future consideration. This amounts to unreasonable behaviour and the Applicant incurred wasted expense in defending this reason for refusal.

Conclusion

13. For the reasons outlined above, I conclude that a partial award of costs, to cover the expense incurred by the Appellant in defending the third of the Council's putative reasons for refusal, is justified.

Costs Order

14. 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 Tandridge District Council shall pay to Mr Nigel Greenhalgh of Village Developments, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the third putative reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Tandridge District 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.

R Sabu

INSPECTOR