The Planning Inspectorate

Costs Decision

Site visit made on 6 December 2022

by J Moore BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 JANUARY 2023

Costs application in relation to Appeal Ref: APP/M3645/D/22/3296071
130 Harestone Valley Road, Caterham CR3 6HG

- 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 J Mouralidarane for a full award of costs against Tandridge District Council.
- The appeal was against the refusal of an application for Demolition of existing conservatory. Proposed part single part two storey rear extension, proposed loft conversion to create habitable accommodation, increase in ridge height, portico to the front and replacement front boundary wall, railings and gates.

Decision

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

Reasons

2. The Planning Practice Guidance 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. Costs cannot be claimed for the period during the determination of the planning application, although behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.

3. The applicant alleges that the Council behaved unreasonably in determining the application by disregarding material information; by insisting on a change to the description of the proposed development; and by failing to have reasonable regard to the application of development plan policy. The Council has not responded or provided evidence to counter the case set out in the cost application.

4. The Council visited the appeal property on 20 July 2017 and wrote to the applicant on the following day, detailing various departures from the approved plans under reference TA/2019/899; advising the cessation of works and offering three options to regularise matters. I found this to be a reasonable action to seek to resolve matters. The options included the submission of an application for a certificate of lawfulness.

5. The applicant chose none of those options and instead submitted a planning application. The rationale for this action was referred to in paragraph 4.1 of the accompanying design and access statement: "For completeness the application

is submitted as a householder planning application, although the approved scheme and permitted development rights are material to its determination."

6. In dealing with the application for planning permission, it was not the role of the Council to determine whether elements of the development were lawful in order to decide whether the applicant might be able to rely on permitted development rights as a fallback. This can only be formally determined by an application for a certificate of lawfulness, and this option was clearly offered in the Council's enforcement letter.

7. The information provided with the planning application clearly drew attention to matters pursuant to the exercise of permitted development rights. As such, I consider that it was unreasonable of the Council not to explicitly address this matter in their officer report. However, it is clear that this would not have made any difference to their decision. Consequently, I consider that the Council's unreasonable behaviour during the determination process did not lead to unnecessary or wasted expense in the appeal process.

8. It is not uncommon for a Council to request a change to a description of development, and the applicant was free to decline that request. It is clear from the officer report that elements of the proposed development were identified as retrospective. The officer report clearly sets out the development plan policies upon which they considered the planning application, and the conclusion within that report was a reasonable exercise of planning judgement.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

J Moore

INSPECTOR