The Planning Inspectorate

Costs Decision

Site visit made on 4th April 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Costs application in relation to Appeal Ref: APP/P5870/W/22/3300672
Oakwood Court, Benhill Wood Road, Sutton SM1 4HS

- 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 Oakwood Residents Committee Limited for a full award of costs against the London Borough of Sutton.
- The appeal was against the refusal of planning permission for single storey roof extension to provide 2 new dwellings.

Decision

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

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The applicant contends that the Council incorrectly applied development plan policies as if determining a planning application. The applicant suggests that the Council should have been aware of the judgement made in the High Court[1] which, they state, confirm that a decision maker is not entitled to have regard to all material considerations, as is the case of an application for planning permission. Consequently, the applicant states, under prior approval provisions, the policies of the NPPF can be applied while the development plan policies have no statutory supremacy.

4. The Council has responded by providing appeal decisions which were issued following the High Court judgement, within which development plan policies were used in the assessment but only insofar as they relate to the development and prior approval matters.

5. The inclusion of development plan policies in the Council's assessment is not, in and of itself, unreasonable, as they are applied only to prior approval matters under consideration. From my review of the Council's officer report, it appears that the development plan policies were used as a basis for the Council's planning judgement, rather than to support it. Whilst I have not agreed with the Council's analysis in relation to the refusal reason, the Council nonetheless produced clear reasoning to support the decision.

[1] GPDO Class AA and "External Appearance": CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC [2022] EWHC 208 (Admin)

6. The applicant also asserts that the reason for refusal related to the absence of a completed legal agreement to secure the prohibition of the future occupiers from obtaining residents car parking permits was unreasonable behaviour. This is because the provision of the legal agreement could have been secured by a suitably worded planning condition.

7. However, I am mindful of the guidance within the PPG[2] which outlines that a negatively worded condition limiting the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases. Whilst the PPG does confirm that, in exceptional circumstances a negatively worded condition may be appropriate, I have not been made aware of any exceptional circumstances which are applicable in this instance.

8. The applicant also asserts that, in the absence of any consultation response from the Council's Highways Officers, the Planning Officer's reason for refusal related to car parking exceeded the scope of their authority and, by referring to previous Highways comments related to a previous application, brought extraneous material into the judgment of the application.

9. It is reasonable for Planning Officers, in the absence of consultee comments, to undertake their own assessment of the issue at hand. As set out in the appeal decision, following consideration of the car parking evidence on its merits alone, I find no reason to disagree with the Council's conclusions that the development should be car-free.

Conclusion

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

B Pattison

INSPECTOR

[2] Paragraph: 010 Reference ID: 21a-010-20190723