



Costs Decision

Site visit made on 10 October 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2023

Costs application in relation to Appeal Ref: APP/L3625/W/22/3310715 Rokeby, 19 Tower Road, Tadworth KT20 5QY

- 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 and Mrs Alex and Zena Curry against the decision of Reigate and Banstead Borough Council.
 - The appeal was against the refusal of a planning application for the replacement dwelling to Passivhaus standard following demolition of Rokeby, 19 Tower Road and addition of two semi-detached dwellings to fill the gap in the site frontage to 19 Tower Road.
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Decision

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

Reasons

2. The National Planning Practice Guidance (NPPG) 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. Unreasonable behaviour can be procedural, or it can relate to the substance of the matters under consideration as part of the appeal.
3. Paragraph 049 of the NPPG highlights the examples of unreasonable behaviour by Local Planning Authorities where costs can be awarded. The applicant has submitted that the Council has acted unreasonably in that it failed to apply the merits of providing a highly sustainable development at the appeal site. The applicant also claims the Council prevented and delayed a development that should have been permitted, by failing to substantiate its reasons for refusal and making vague, generalised, or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis.
4. The reasons for refusal are set out in the officers' report and the decision notice, and are complete, precise, specific and relevant to the application. The Council clearly referenced the relevant policies of the Reigate and Banstead Local Plan Development Management Plan, adopted September 2019 and the National Planning Policy Framework which formed the Councils development plan at the time of its decision. I find in reaching a decision the Council did consider the proposal against the relevant development plan policies and in respect to all appropriate matters, including sustainability, reached a conclusion that was objective and reasoned in its analysis. As such I am satisfied that the Council has shown that it was able to substantiate their reasons for refusal.

5. The applicant also contends that they incurred wasted expenditure, as the delays in determination by the Council necessitated an additional ecological note to ensure that the concerns of the Surrey Wildlife Trust were addressed. Following the receipt of this information at appeal stage, the Council did not contest the third reason for refusal on ecology, subject to the provision of suitable conditions. However, without this additional information the Council would have been unable to reach that conclusion. Had these concerns not been addressed, I find that the ecological issues would have still needed to be assessed at the appeal stage. In this regard, I do not find that the production of the additional report was an unnecessary step in the appeal process nor that it caused wasted expense.
6. The applicants further highlight that in delaying the decision, the Council allowed for the appeal site to be included within the Tadworth conservation area (TCA) as a result of an extension to the TCA, which was agreed at Committee. The inclusion within the TCA provided an additional designation, which had not been applicable to the appeal scheme prior to its submission. Nevertheless, I find that the applicants were aware of the extension to the TCA and indeed provided comments as part of its consultation, as highlighted in the Committee Report¹. Furthermore, the Council communicated its concerns in respect to the design of the scheme with the applicants prior to its designation, which were unrelated to any harm on the TCA. Whilst the applicant will disagree with both the Council's assessment of the scheme and subsequent designation in the TCA, this in itself does not amount to unreasonable behaviour.
7. However, I did find that the Council did not act in a communicative, timely or pro-active manner as advised by the NPPG, instead reacting to, rather than pre-empting, the applicant's prompts to provide updates. Whilst I understand the applicant's frustration with the Council's delay in the determination of the application and its poor communication during the process, the Council nevertheless did reach a reasoned decision in refusing the scheme. Even if the decision had been made in a more timely manner, I am satisfied that the application would still have been refused and an appeal would have resulted nevertheless.
8. Consequently, I do not find that the delays in the Council determining the application prevented a development which should clearly have been permitted, nor do I find there was any unnecessary or wasted expense in providing additional information as the Council's case was well-founded and justified. As parties in planning appeals and other planning proceedings normally meet their own expenses, I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the NPPG, has not been demonstrated and that no award of costs is justified.

Robert Naylor

INSPECTOR

¹ Reigate and Banstead Planning Committee Meeting on 6th April 2022 – Agenda Item 9