



Costs Decision

Site visit made on 9 October 2023

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2023

Costs application in relation to Appeal Ref: APP/C1760/D/23/3322816 Essenes Cottage, Doctors Hill, Sherfield English, Hampshire, SO51 6JX

- 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 Ian Campbell for a full award of costs against Test Valley Borough Council.
 - The appeal was against the refusal of planning permission for construction of an additional storey, installation of balconies, alterations to windows and doors.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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 appellants application for costs raises a substantive point. The PPG states that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate its reasons for refusal.
4. The appellant contends that the local planning authority were not in a position to reach the decision they did, misunderstood the proposed design and relevant development plan policies and prevented development which should have been permitted. Whilst I have found the appeal proposal to be acceptable, that finding was based on the evidence presented by the local planning authority, the policies of the development plan and the National Planning Policy Framework, and my own observations on site.
5. I am satisfied that the local planning authority's reasons for refusal were precise in terms of identifying the harm that they alleged, as well as the policies of the development plan that they considered the proposal would conflict with. The second reason for refusal raised concerns over the lack of survey information to enable the local planning authority to conclude whether the development would have an adverse impact on protected species and if so what mitigation might be required. That is an entirely valid and reasonable objection for the local planning authority to raise based, in particular, on the requirements of the Conservation of Habitats and Species Regulations 2017. It is not a matter that could have been conditioned and it was only following the appellants submission of the Bat Emergence Survey Report, dated June 2023, after the appeal was lodged, that this objection was addressed.

6. Turning to the first reason for refusal and the impact of the proposal on the character and appearance of the area and alleged poor design, this objection was supported by an assessment undertaken by Officers within the Council's Delegated Report (CDR). Whilst I accept that there were some errors in the CDR, these were not, in my view, substantive and did not take away from my understanding of the concerns that the Council were raising.
7. As I observed on my site visit the character and appearance of the area is varied, it comprises a mixture of old and new but, even so, there are few examples in Doctors Hill of what could be regarded as truly contemporary designs. Moreover, I am satisfied that the local planning authority, as is required, assessed the case on its individual merits having regard to the local context and relevant development plan policies and guidance. Any assessment of the acceptability of the proposed design and impact on character and appearance will be subjective and matters of planning judgement, on which opinions will differ. It is also a matter for the decision maker to decide what weight should be accorded to such factors and any benefits that may arise from the proposal.
8. As I confirmed earlier, the local planning authority's evidence comprised of its reason for refusal, CDR and policy documents. These provided, in my view, a precise explanation of the local planning authority's objections to the appeal scheme. This evidence was also consistent with the guidance on Householder Appeals set out in the 'Procedural Guide – Planning Appeals – England' (July 2020). Paragraphs C.7.2 – 7.3 to Annex C of this Guide state that the local planning authority's case should comprise its reasons for refusal, report and any documents that accompany its Questionnaire, and that it will not normally be able to send any additional information unless requested to do so or in response to a query raised by the Inspector. Whilst the appellant complained about the local planning authority's failure to respond to its Grounds of Appeal (GOA), the Householder Appeals process does not formally give them an opportunity to do so.
9. In relation to the Council's letter of 8 August 2023 this accompanied their Questionnaire, policy documents and schedule of conditions, and essentially sought to correct omissions and errors within its CDR, highlighted in the appellant's GOA. It also sought to respond to the appellant's bat survey, submitted after the appeal was lodged. Had the local planning authority not addressed these matters, then they are queries that I would have had to raise with them directly and as such their letter prevented any delay in determining the appeal.
10. For the above reasons, I cannot agree that the Council has acted unreasonably in this case and as such there can be no question that the appellant was put to unnecessary or wasted expense in the appeal.

Conclusion

11. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

G Roberts

INSPECTOR