



Costs Decision

Site visit made on 15 August 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 January 2024

Costs application in relation to Appeal Ref: APP/L3625/W/23/3316695 44 Beechen Lane, Lower Kingswood, Surrey KT20 6RY

- 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 Ms Angela Williams for a full award of costs against Reigate and Banstead Borough Council
 - The appeal was against the refusal of planning permission described as change of use from ancillary residential outbuilding/summerhouse to a dual use for use as a day nursery and ancillary residential outbuilding.
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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 PPG also states that examples of unreasonable behaviour by local planning authorities can include lack of co-operation with the other party or parties.
4. The applicant contends that they were misled by the case officer during the site visit and during the determination of the application. I have not been provided with any records of conversations between the two parties. However, the Council confirm that following the site visit the application underwent further consultation processes and discussions with senior Officers. Advice during a site visit is not binding and cannot pre-determine the final outcome of the planning application, which must take account of all relevant factors. Therefore, I find no unreasonable behaviour in this regard.
5. The applicant suggests that a lack of communication during the application process prevented them from providing details to demonstrate the significant need for the provision of the nursery and the lack of availability of alternative premises locally. As a result, this matter was not resolved during the application, albeit the Council subsequently confirmed that they no longer wished to defend the part of the reason for refusal related to these issues.
6. However, the applicant did not seek pre-application advice prior to submitting the application, and this would have provided the opportunity to discuss the proposal and could have highlighted the need for such information. Notwithstanding this, as there was a fundamental disagreement between the parties as to the noise, disturbance and highways impacts related to the

development, it seems to me, unlikely that the overall planning balance would have been significantly altered or that the reason for refusal would have been overcome through discussion during the application period.

7. Turning to the suggestion that an extension of time would have enabled the appeal process to be avoided altogether, the information before me indicates that the extent of the Council's concerns were such that, even with an extension of time, the Council would have refused the application for the reasons set out in the appeal documentation. Therefore, the appeal could not have been avoided. I have found that in exercising their planning judgement the Council had reasonable concerns about the impact of the proposed development which justified its decision.
8. The applicant requested that the application be considered by the Council's Planning Committee. However, officers determined the application under delegated powers. The Council confirm that the Constitution and Scheme of Delegation sets out when applications will be taken to Planning Committee. The application did not fall within a category requiring it to be taken to Committee, and it was not 'called-in' by a Councillor. Consequently, there was nothing to prevent the application from being determined under delegated powers, and I find no unreasonable behaviour in this regard.
9. Therefore, having considered all the evidence put forward by the parties, I consider that the appeal could not have been avoided and that the appellant has consequently not been put to unnecessary expense through the Council's handling of the application.

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. A claim for costs is not therefore justified and accordingly it is refused.

B Pattison

INSPECTOR