



Costs Decision

Site visit made on 4 January 2024

by R Lawrence MRTPI, BSc (Hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Costs application in relation to Appeal Ref APP/C3620/W/23/3320949

1 Thistle Cottages, Kingston Road, Leatherhead, Surrey KT22 7PF

- 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 John Rands for a full award of costs against Mole Valley District Council.
 - The appeal was against the refusal to grant planning permission for the demolition of existing garage and erection of extensions to 1 Thistle Cottages, erection of two new dwellings in garden together with access and parking.
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Decision

1. The application for an award of costs is allowed, in part, in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
3. The applicant alleges that the Council behaved unreasonably as it failed to substantiate its reasons for refusal. Specifically it is argued that the Council made vague, generalised assertions about the proposal, misapplied policy and insufficiently justified disregarding comments from the Highway Authority.
4. Furthermore, the applicant alleges that proposal complied with the development plan and should have been permitted and the necessary appeal has caused delay and unnecessary expense.
5. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
6. In respect of the third reason for refusal, which refers to insufficient off-street parking and resultant inconvenience to residential occupiers and users of the highway, there is a lack of evidence to substantiate this, either within the Council's officer report, or elsewhere within its evidence. The finding that insufficient parking was provided, was based to a large degree upon a judgement as to the likely occupancy of the proposed dwellings, having regard to the number of bedrooms proposed. The size of the units, in terms of the number of bedrooms proposed, is already taken account of in the parking guidelines and there would be no further means of control over the occupancy.

No further justification has been provided by the Council as to the need for increased parking provision. LP Policy MOV5 specifies that the parking standards should be applied as a maximum, as such in the absence of clear justification for higher standards, the Council's finding that insufficient parking is proposed amounts to unreasonable behaviour.

7. Resulting harm to the environmental character of the area reflects the requirements of Policy MOV2. However, there is an absence of any further explanation or justification as to how any overspill parking would harm the environmental character. Reference to inconvenience to residential occupiers does not appear to relate to the requirements of the listed policies MOV2 or MOV5. The applicants reference to the lack of a response from the County Highway Authority is noted. It is open to a Council to reach a different view to a consultee, where appropriate justification is provided. However, no such justification has been provided in this case. I therefore find that the third reason for refusal was unreasonable, and this has thereby caused the applicant to incur unnecessary or wasted expense in disputing this reason for refusal.
8. The first two refusal reasons, as set out on the decision notice, are complete, precise and relevant to the proposed development. The decision notice also clearly states the relevant development plan policies with which the proposal would be in conflict with. The Officer Report sets out how the proposal would cause harm to the character and appearance of the area and to the living conditions of occupiers of neighbouring buildings. Whilst the Council did not provide further evidence within its statement of case or respond to the evidence submitted by the applicant at the appeal stage, the Council's evidence makes it clear that it considered the matters raised by the applicant had already been addressed in the officer report.
9. In assessing the effect of the development on the character and appearance of the area, the Council refer to a minimum separation distance of approximately 15m. This appears to be a rule of thumb, rather than a requirement set out in any policy document and as a result is not a helpful measure. Reference is also made to the plots surrounding the site comprising generous sized gardens. Whilst I accept the applicant's position that the appeal site is large, relative to its surroundings, it does not follow that neighbouring gardens are therefore small or render the Council's comments inaccurate. It is wholly appropriate and indeed necessary for the Council to make an assessment of the character of the area. As such, whilst reference to a 15m guideline is unhelpful, the reason for refusal is not reliant wholly upon this and it has not resulted in any unnecessary or wasted expense.
10. Refusal reason 2, relating to living conditions of neighbouring occupiers, is supported by a detailed analysis of the proposed relationship between neighbouring properties and the proposed dwellings. This includes reference to the angles of intervisibility, the use of neighbouring rooms and the position of neighbouring windows. The Council's evidence therefore appears sufficient clear and precise, such to substantiate the reason for refusal. I therefore consider that an award of costs on the basis of the Council's behaviour in respect of refusal reasons 1 and 2 is not justified. However, this does not alter my conclusions in respect of the third reason for refusal.

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11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mole Valley District Council shall pay to Mr John Rands, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in defence of the third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Mole Valley District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Lawrence

INSPECTOR