



Costs Decision

Site visit made on 5 June 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd July 2024

Costs application in relation to Appeal Ref: APP/R3650/D/23/3330620 Royal Farm House, Milford Road, Elstead, Godalming GU8 6LA

- 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 Simon Negus for a partial award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission to remove conditions 4 and 5 of WA/2022/00797.
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Decision

1. The application for a partial award of costs is allowed 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 has applied for a partial award of costs that broadly relates to both substantive and procedural grounds, namely, the imposition of conditions 4 and 5 which were said to be unreasonable; and delays in the Council issuing its decision.
4. The Council contends in its cost rebuttal that condition 4 was reasonable as it allows for either the 2022 planning permission or the certificated development to be completed. It is evident from my appeal decision that I have not found this to be the case.
5. Not only did I have concerns over some of the wording in the condition and how it was constructed but when read as a whole it did not achieve what the Council intended. The appellant's interpretation that the condition prevented the implementation of the 2022 permission was, to my mind, correct.
6. The applicant's concerns about the wording were raised during the course of the discussions with the case officer, even going as far as to suggest advice was sought from the Council's legal advisor. It seems to me that had this been done, there was a reasonable prospect of an appeal being unnecessary in relation to this condition. Overall, I find the Council's actions to have been unreasonable and have led to the appellant incurring unnecessary expense.
7. It seems self-evident that if I were to have found condition 4 unreasonable, I would have needed to omit it from any new permission. The consequence would then be that the dwelling could be significantly extended without further

recourse to the Council for permission. As such, the context would then be very different from when the Council first granted planning permission in 2014, when it did not remove permitted development rights.

8. Therefore, regardless of the Council's behaviour, there was evidently a likelihood that I would need to address the matter in detail. In these circumstances it cannot be said that the work undertaken by the applicant in relation to condition 5 could be considered unnecessary or wasted.
9. The PPG advice is clear in Paragraph: 033 Reference ID: 16-033-20140306, that costs cannot be claimed for the period during the determination of the planning application. Nevertheless, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
10. I have no doubt that the delays involved in obtaining a decision from the Council were frustrating although it was open to the applicant to refuse the requests for extensions to the statutory timescales for determining the application. However, even if the Council had made its decision within the statutory timescale there is nothing before me to suggest that the outcome would have been any different and that the appeal would have been avoided.

Conclusion

11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of condition 4 and a partial award of costs is therefore warranted for work undertaken in relation to that matter.
12. I do not find that it has been demonstrated that the other work undertaken in relation to the appeal has been unnecessary or wasted. It follows that an award of costs is not justified in respect of those parts of the claim.

Costs Order

13. 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 Waverley Borough Council shall pay to Mr Simon Negus, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the Council's refusal to remove condition 4 of WA/2022/00797; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Waverley Borough 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.

Stewart Glassar

INSPECTOR