



Costs Decision

Site visit made on 18 June 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2024

Costs application in relation to Appeal Ref: APP/M3645/W/23/3332900 Ridgeway, Hollow Lane, Dormansland, Surrey RH7 6NR

- 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 & Mrs Mark & Samantha Samson for a full award of costs against Tandridge District Council.
- The appeal was against the refusal of the Council to grant planning permission for a development originally described as "retrospective application for demolition of existing dwelling and construction of replacement dwelling. Regularisation of works completed to date. Demolition of existing rear extension and replacement with new single storey extension with pitched roof."

Decision

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

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. Examples in the PPG of behaviour that may give rise to a substantive award of costs include where a local planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; where there has been a failure to produce evidence to substantiate each reason for refusal on appeal; where vague, generalised or inaccurate assertions have been made about a proposal's impact, which are unsupported by any objective analysis; not determining similar cases in a consistent manner; and not reviewing their case promptly following the lodging of an appeal against refusal of planning permission.
4. The applicants' case is that the Council has demonstrated all the above examples of unreasonable behaviour in its refusal of planning permission.
5. In reaching its decision, the Committee had before it a report recommending that planning permission be granted. This set out the relevant considerations and policies relating to, amongst others, the Green Belt. The planning application submission included the applicants' Heritage Statement showing the location of Greathed Manor, a Grade II listed Park and Garden ("the GMRPG") and its listing description. Given the statutory duty¹ on the decision maker to pay special attention, and have regard to, the desirability of preserving the

¹ Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990.

setting of listed buildings, it was not unreasonable for the Committee to consider the effect on the GMRPG, and it also recognised the proximity of the appeal development to the High Weald National Landscape ("the HWNL").

6. The Council's reason for refusal (RFR) number 1, clearly articulates its planning judgement that the size of the proposed replacement dwelling, including its additional built form and bulk, would be detrimental to Green Belt openness, and would harm the HWNL and GMRPG. These are matters requiring planning judgment and I am satisfied that the Committee explained its judgement in sufficient detail, with reference to applicable policies, justifying why it found harm in these respects. Although I have disagreed with the Council's Committee in my main decision, there is nothing inherently unreasonable with its decision, and its behaviour was reasonable in the terms expressed in the PPG.
7. The scale, siting and design of the proposed development and its relationship with Number 54 Beacon Hill, would have been clear to the Committee from the submitted drawings, including a section drawing and a 3D visualisation of the proposal, along with a representation from the occupier of Number 54. The Committee's judgement that the proposal would harm the living conditions of the occupiers of Number 54, was adequately justified through its refusal reasons, with reference to applicable policies. Whilst expressed with repetition across RFR numbers 2 and 3, together they are sufficiently clear and would not have caused the applicants unnecessary or wasted expense in addressing them through the appeal. Although I reached a different decision on this matter, it does not make the Council's decision unreasonable on the evidence before me.
8. The appeal site has planning permission² for the erection of a replacement dwelling which differs from the replacement dwelling the subject of this appeal in respect of its rear wing. At the point of refusing planning permission for the appeal proposal, the earlier planning permission for the replacement dwelling had already created a fallback position.
9. There is no substantive evidence that the Council, in the period following the Committee's resolution, expressly took account of the fallback development in refusing planning permission for the appeal proposal. However, as evidenced in the Council Officer's Report accompanying the planning permission, the decision was made in the knowledge of the Committee's resolution, including the objective fact that the refused scheme had more built form in its rear wing.
10. The Council had an opportunity to send the appeal application back to the Committee to be re-considered in light of the planning permission granted for the replacement dwelling. However, it is a matter of fact that the appeal scheme and the granted planning permission scheme are not identical, and the Council has advised in its appeal statement that the differences between them led it to reach different decisions.
11. There are no numerical thresholds in the Framework or the Council's policies to determine whether a building is materially larger than the one it would replace, or when harm to Green Belt openness would occur. These are matters of judgement for the decision maker.

² Ref. TA/2023/838 granted 30 October 2023.

12. The respective rear wings in both schemes would be set behind the main core of the respective dwellings. Given the differences between them, it was not unreasonable for the Council, in exercising planning judgement, to determine that the larger of the two rear wings with its greater built form would, to the extent that it would be visible, have a greater impact on the Green Belt, the GMRPG and the HWNL than the smaller rear wing of the approved scheme.
13. Based on the differences between them, even if the Council had referred the appeal application back to its Committee for re-consideration, I find it most unlikely that it would have resulted in a different decision or different refusal reasons. Consequently, taking all the above into account, I find that the Council's decision on the appeal scheme was not fundamentally inconsistent with its earlier decision to grant permission.
14. Although I have allowed the applicants' appeal for the reasons given in my main decision, I am satisfied on the evidence before me that the Council has not behaved unreasonably in the terms expressed by the PPG above, and its judgement to refuse planning permission was sufficiently justified to be reasonable. Even taking account of the fallback position, to my mind the acceptability of the appeal development when assessed against the development plan and the Framework, was not so apparent that it should clearly have been permitted in the terms expressed in the PPG. As such, the Council did not prevent or delay a development which should clearly have been permitted.
15. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted. The appeal and the applicants' expense in pursuing it were a necessary part of the process and could not have been avoided.

G Sylvester

INSPECTOR