



Costs Decision

Site visit made on 19 September 2024

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2024

Costs application in relation to Appeal Ref: APP/C3620/W/24/3337285 Rydal Oaks, Cobham Road, Bookham, Cobham, Surrey KT11 3QL

- 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 Mrs Joni MacKay for a full award of costs against Mole Valley District Council.
 - The appeal was against the refusal of planning permission for the erection of a replacement detached house following demolition of non-agricultural outbuildings. Amendment to residential curtilage.
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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. The PPG sets out that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. It states that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive.
4. As an example of substantive award, the PPG sets out that determining similar cases in a consistent manner¹ is necessary.
5. The appellant points to examples where the Council has given great weight to fall back positions relying on potential permitted development additions, including for the new dwelling recently built to the north. As set out in the main decision, whilst in principle similar development should be treated in a consistent manner, as set out by the barrister advice submitted², the weight to be given to such positions is a matter for the decision maker.
6. There are a number of reasons why the weight given in such fall back positions by the Council can alter over time, or 'to reconsider their approach', as put by the Council, such as legal opinion, changes in policy, principles established by the Courts or appeal decisions. The Council set out that they are attempting to be more robust in their decision making in response to the increasing 'trend' of

¹ Paragraph: 049 Reference ID: 16-049-20140306

² Stephen Whale, Landmark Chambers, London, 16 January 2024.

'fall-backs' to be based on highly theoretical scenarios without firstly being established through certificates of lawfulness, or including any information that pertains to the fall back actually being implemented.

7. A review of such matters in order to give an appropriate weight to such fallback positions is entirely within the purview of the Council, and it is unreasonable to expect advertise or consult on this change in approach. The Council has explained why a different approach was considered appropriate. Whilst this may result in some initial inconsistency in decision making, this does not represent unreasonable behaviour.
8. Accordingly, it has not been demonstrated that the applicant's time and expense in defending this matter was not necessary and has resulted in unnecessary or wasted expense on their behalf.

Conclusions

9. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for an award of costs is therefore refused.

B Phillips

INSPECTOR