



Costs Decision

Site visit made on 3 September 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2024

Costs application in relation to Appeal Ref: APP/C3620/W/23/3334416 The Walled Garden, Downs Lane, Leatherhead KT22 8JW

- 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 R Hall for a full award of costs against Mole Valley District Council.
 - The appeal was against the refusal planning permission for erection of a single storey replacement dwelling, without complying with conditions attached to planning permission Ref MO/2022/1647/PLA, dated 22 September 2022.
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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. Local planning authorities risk an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications or unreasonably defending appeals.
4. The PPG further makes it clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. The applicant's claims are made on both procedural and substantive grounds. Firstly, it is argued that the Council imposed the disputed conditions despite its planning committee having made no mention of removing permitted development (PD) rights at the meeting, and that this did not form part of the case for very special circumstances (VSCs) accepted by the committee. In this respect, the committee did not give the 'clear justification' required by the National Planning Policy Framework (the Framework) for the removal of PD rights. Thus, it was not necessary to impose the conditions when the harm in Green Belt terms had already been overcome by the identified VSCs. The Council's actions were thus unreasonable.
6. Secondly, the applicant states that the Council, in refusing the application to remove the disputed conditions, gave different reasons for the imposition of conditions, referring to Green Belt policy and openness, not design quality and character of the area as stated in the formal reasons on the decision notice. This 'moving of the goalposts' is argued to amount to unreasonable behaviour.

7. Finally, on substantive grounds, it is contested that the Council in determining the application failed to take into account the material considerations put forward by the applicant in its planning statement, instead addressing different grounds and forcing the applicant to repeat his arguments at appeal.
8. The Council in response states that the committee resolved to grant permission subject to conditions to be agreed between officers and the chairman, and it was clear that conditions were imposed which reflected discussion by the committee where it was deemed necessary to remove PD rights, as further outbuildings could otherwise undermine the architectural quality of the development. The comments of members in a later application for a pool house on the site reiterated their views on outbuildings from the original application.
9. The Council adds that its assessment of the application was based on the reasons for the conditions, as 'design quality' incorporates Green Belt openness, and the reasons make reference to both development plan policy relating to design and character, and the Framework.
10. The evidence before me is limited in terms of the Council's procedures for determining applications at committee. Where concerns exist over the Council's administrative handling of an application, or whether correct procedures are followed at committee meetings, these are normally matters for local government accountability. It is where those actions have a direct bearing on the appeal that there may be relevance to an award of costs. I appreciate the frustration of the applicant, and although I have had regard to the sequence of events leading to this appeal in terms of their influence on later action by the Council, it is not the original application which has been appealed, but a subsequent Section 73 application. As such, it is the Council's conduct in determining this latter application that is relevant to the question of whether unreasonable behaviour has been exhibited and an award of costs warranted.
11. The minutes of the committee meeting record that the planning committee voted to approve the application "*subject to the below conditions and informatives as agreed by officers in consultation with the Chairman.*" There is no evidence before me to demonstrate that this course of action was contrary to protocol. The conditions listed in the minutes, and on the decision notice, contain clear reasons for their imposition, which refer to the Green Belt balance and the need for the conditions to maintain very special circumstances deemed by the committee to exist. The reasons also cite relevant development plan policies.
12. Moreover, in refusing the Section 73 application to remove the disputed conditions, the Council has set out its reasons in a delegated report and subsequently in a statement of case. There is no evidence that the Council's use of delegated powers to determine this case was contrary to its own published procedures. It will be seen from my main decision that I found the Council's reasons for refusing the Section 73 application did not materially deviate from the reasons given on the decision notice, which referred to design quality and the overall Green Belt balance. Thus, I find no unreasonable behaviour by the Council in procedural terms.
13. In substantive terms, my main decision sets out that I have largely agreed with the Council's position at appeal in respect of the need for the disputed conditions, with the exception of the removal of the PD rights under Classes B and C of Schedule 2, Part 1, relating to roof extensions and alterations.

However, this was based on the negligible impact I consider would arise to the overall design quality of the dwelling from the limited extent of works permissible under these classes, in light of the particular form of the approved building. This is a matter of planning judgment, and therefore I find that the Council has not exhibited unreasonable behaviour in defending its case at appeal or in refusing to amend the disputed condition to remove Class B and Class C restrictions.

Conclusion

14. For the reasons set out, I conclude that that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award of costs is made.

K Savage

INSPECTOR