



Costs Decision

Site visit made on 4 December 2023

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Costs application in relation to Appeal Ref: APP/W1715/W/23/3320124 49 Bishopstoke Road, Bishopstoke, Eastleigh, Hampshire, SO50 6BF

- 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 Jane Bray for a full award of costs against Eastleigh Borough Council.
 - The appeal was against the refusal of planning permission for a two-bedroom dwelling.
-

Decision

1. The application for the 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 appellant considers that the Council prevented or delayed development which clearly should have permitted without delay; the Council misunderstood the evidence and did not substantiate the reasons for refusal; and the Council was obstructive and overly negative in requiring detailed information that could have been addressed in conditions. A full award of costs is sought on the grounds that the appeal could have been avoided.
4. Without repeating the Appeal Decision in detail, I have found that the proposal would conflict with the development plan and I found insufficient material considerations to outweigh that conflict. Accordingly, I do not consider the Council prevented or delayed development that should have been permitted.
5. I have found a lack of clarity about parts of the proposal and some inconsistencies in the information. As is often the case, additional evidence and alterations to the proposal were put forward by the appellant, for example to address concerns about the construction of foundations. However, I have found no significant indication that the Council fundamentally misunderstood the proposal or did not defend the reasons for refusal.
6. It is good practice for Councils to provide consultation responses to applicants. However, in my experience it is not uncommon for the case officer to discuss proposals with consultees after their initial response. Unfortunately, this does sometimes result in an initial lack of objection being changed to an objection as with the comments of the Council's ecologist in this case. I have found potential direct impacts on water quality on the adjacent protected Itchen Navigation and a paucity of evidence relating to biodiversity gain and I find no

unreasonable behaviour in the ecological objection or wasted expense on addressing ecological matters.

7. The design and materials of the proposed dwelling was not a reason for refusal so I do not consider that the views of the Council's Built Heritage Consultant were totally ignored. Officers quite rightly weighed up the material planning considerations, including views of consultees, and exercised planning judgement in deciding the planning application on behalf of the Council.
8. The overarching sustainable objectives of the National Planning Policy Framework (the Framework) are to be delivered through the preparation of plans and are not criteria against which every decision on proposals can or should be judged. The Council identified just in excess of the required five-year deliverable housing land supply so the so-called tilted balance at Paragraph 11 d) of the Framework is not engaged. It is a matter for judgement as to how much weight should be afforded to elements of proposals.
9. The appellant considers that had the Council given proper weight to the provision of a custom designed dwelling for an older person to downsize, the appeal may have been avoided. However, given my Appeal Decision findings I do not consider this to be the case. I do not find the Council exhibited unreasonable behaviour in refusing the application or that the case officer failed to carry out a planning balance correctly or fairly albeit it would have been helpful if this had been formally set out in the Officer Report. From the evidence I have seen it seems unlikely that doing this would have led to a different outcome: the appeal could not have been avoided.
10. The details of some matters are capable of being required by planning condition. However, as set out in my Appeal Decision, some are not. Such matters should be fully evidenced before permission could be granted and it was not unreasonable for the Council to ask for further details. It is proper that the Council provides conditions considered to be necessary in the event that the appeal were to be allowed. This does not prejudice the Council's case. I see no unreasonable behaviour in relation to the Framework.
11. Whilst it can be helpful to quote Chapters or Paragraphs from the Framework there is no requirement to do so. I found no difficulties in understanding the Council's case in this respect.
12. The appellant could have submitted plans without a rear balcony but did not. The appeal process should not be used to develop a proposal and I have found a loss of privacy on the basis of the plans before me.
13. For the reasons set out above find the appeal could not have been avoided. I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated.

S Harley

INSPECTOR