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Miss Karen Wooden
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Your Ref:

Our Ref:

Date:

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APP/X1735/A/10/2129275/NWF

4 November 2010

Dear Miss Wooden

Town and Country Planning Act 1990
Appeal by Jonathon Thomson
Site at Kingsley House, 52 Havant Road, Emsworth, PO10 7JG

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

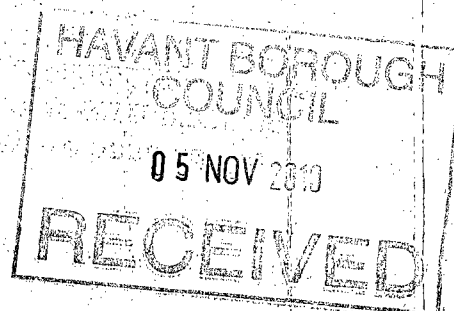
If you have queries or complaints about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 0207 947 6655.

You should also note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly. Please contact the Administrative Court for further information.

Yours sincerely





Attila Borsos

COVERDL2

You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/caserearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button



Costs Decision

Site visit made on 12 October 2010

by **Mike Robins MSc BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 November 2010

Costs application in relation to Appeal Ref: APP/X1735/A/10/2129275 52 Havant Road, Emsworth, Hampshire PO10 7JG

- 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 Jonathan Thompson for a full award of costs against Havant Borough Council.
- The appeal was against the refusal of planning permission for the demolition of the existing coach house and erection of a two storey, 3 bay garage block with studio above.

Decision

1. I refuse the application for an award of costs.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appellant submitted a written application for costs in which it was suggested that the Council acted unreasonably in their consideration of this matter so as to cause unnecessary costs. The application stated that the Council did not have good reasons to put aside recommendations of their professional advisers and failed to substantiate their stated reason for refusal. This led to the appeal and the appellant incurring additional professional fees.
4. In a written response, the Council stated that they fulfilled the requirements of the Circular and submitted reasonable planning grounds for their decision and evidence to substantiate it. The appellant, they say, did not engage in constructive pre-application discussions, however, Members had full details of the proposal and their decision was informed by a site visit to the appeal site and the neighbouring property. The Members were also aware of the previous appeal decision, but reached a judgement on the impact on the neighbouring property which was not in agreement with the planning officer. The Council further challenged the quantum of costs as set out suggesting that work relating to professional fees was incurred as part of the application.
5. I am satisfied that the Council Members considered the scheme in detail and the differences between it and the earlier scheme refused at appeal. Their judgement was informed by a site visit and evidence that led to their assessment of harm was clearly set out in the statement provided to the appeal, which included both the minutes of the Council meeting and the previous appeal decision.

6. Matters relating to sunlight and daylight, while still reflected in local concerns were not pursued by the Council whose reason for refusal was clear and precise.
7. Members are not obliged to accept the advice of their own officers, and I consider that they were perfectly entitled to make up their own mind based on their own local knowledge and experience. While my own decision may have differed, I consider there were reasonable planning grounds for them to have reached a different view to their officers.
8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has not been demonstrated.

Mike Robins

INSPECTOR



Appeal Decision

Site visit made on 12 October 2010

by **Mike Robins MSc BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 November 2010

Appeal Ref: APP/X1735/A/10/2129275

52 Havant Road, Emsworth, Hampshire PO10 7JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Jonathan Thomson against the decision of Havant Borough Council.
- The application Ref 10/58782/006, dated 4 January 2010, was refused by notice dated 13 April 2010.
- The development proposed is the demolition of the existing coach house and erection of a two storey, 3 bay garage block with studio above.

Application for costs

1. An application for costs was made by Mr Jonathan Thomson against Havant Borough Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for the demolition of the existing coach house and erection of a two storey, 3 bay garage block with studio above at 52 Havant Road, Emsworth, Hampshire PO10 7JG in accordance with the terms of the application, Ref 10/58782/006, dated 4 January 2010, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) Before the first occupation of the building hereby permitted the first floor window in the eastern elevation shall be fitted with obscured glass, the particular type of which glass shall provide a degree of obscuration no less than that provided by Pilkington's Texture Glass Obscuration Level 4, and shall consist of only a top light capable of being inward opening. The window shall be permanently retained in that condition.
 - 3) Works will be carried out in accordance with the Tree Survey and Tree Constraints Plan prepared by Gifford Tree Services dated 16th November 2009.
 - 4) No development shall take place until plans have been submitted to and approved in writing by the local planning authority showing the layout of all foul and surface water drainage and other underground services proposed to serve the development, in relation to the existing trees and other vegetation to be retained.
 - 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local

planning authority. Development shall be carried out in accordance with the approved details.

- 6) The ground floor area, identified as garages on Plan 08/217/5, shall be set out for the parking of cars and that area shall not thereafter be used for any purpose other than the parking of vehicles.
- 7) The first floor accommodation, identified as a studio on Plan 08/217/4, shall be restricted to use ancillary to Flat 3, No 52 Havant Road, Emsworth, from which it shall not be let, sold separately or severed thereafter.
- 8) The development hereby permitted shall be carried out in accordance with the following approved plans: 08/217/1, 08/217/2, 08/217/3, 08/217/4 and 08/217/5.

Main Issue

3. The effect of the proposed development on the living conditions of the occupiers of Southview (No 7 Kingsey Avenue), with particular reference to visual impacts, privacy and sunlight and daylight.

Reasons

4. The appeal site is a coach house, now in poor condition, set in the grounds of a large former rectory subdivided into apartments. The main house is to the rear of properties fronting Havant Road and is approached via a narrow access lane from where it opens out into a large plot dominated by trees, some of which are covered by a Tree Preservation Order, No 1385.
5. The coach house is to the north of the main house and immediately to the west of the rear garden of the neighbouring property, Southview. This property is a large two storey dwelling with its lounge extending into the garden area in a single storey element to the rear. It has a relatively small garden which is enclosed by other gardens to three sides and the house to the south, and has a pleasant, well-tended appearance with a small patio area to the shared boundary with the appeal site. In light of the enclosed and potentially overlooked front garden and drive area, this is clearly an important space for occupiers of this dwelling.
6. The proposal would replace the coach house with a larger building but one which reflects the existing three bay layout and retains a very similar footprint. As a result the eastern elevation would increase in height and bulk as viewed from the neighbouring property. The design is similar to one refused on appeal approximately ten years ago¹, however, the overall height has been reduced, the eaves lowered and an increased hip included in the eastern roof elevation.
7. While these changes are relatively small they would reduce the height of the building and would set back much of the originally proposed bulk of the upper floor and roof from its position close to the boundary with Southview. Consequently, the new roof structure would subtend a much lower angle than that previously proposed when viewed from the neighbouring property and this would address increased shadowing or loss of daylight for the neighbouring garden area. I therefore concur with the Council's findings that there would be no material harm to the living conditions of the neighbouring occupiers in this regard.

¹ Ref: T/APP/X1735/A/99/1032290

8. The proposal includes a large window in the eastern elevation, however, this would have no practical views of the first floor bedroom windows of Southview or any of the lounge windows which face north and east. Views into the garden would be partly limited by the fence and could be further addressed by a condition requiring the use of fixed and obscured glazing. I am content that such a condition would be necessary and could be enforced.
9. The reduction in the ridge and eaves height, and stepping back of the bulk of the roof would relieve the overbearing form of the previous scheme such that any enclosing effect would be mitigated. The main part of the scheme that would be visible to occupants of Southview when standing in the rear garden would be the roof sloping away as opposed to any significant element of the eastern elevation itself. Consequently, while I acknowledge the concerns of the neighbours and accept that the scheme would introduce changes that would be visible from the garden, I do not consider that they would be materially harmful to the living conditions of the occupiers.
10. The scheme would therefore comply with Policy D1 of the Havant Borough District Wide Local Plan which seeks that development does not adversely affect the amenities of occupiers of the neighbouring properties.
11. The proposal would be sufficiently removed from the protected trees, however, some care would be needed in terms of the large yew tree close to the north-west corner. This matter is addressed in a tree report, the recommendations of which can be conditioned to ensure appropriate management and protection of the tree during construction.
12. I have considered the conditions put forward by the Council against the requirements of Circular 11/95 – *The Use of Conditions in Planning Permissions*. In addition to the standard timescale condition, the obscure glazing and the adoption of recommendations in the tree report, I have imposed a condition to ensure that existing trees and vegetation are identified in relation to proposed underground services to protect them and the sylvan character of this backland garden setting. I have also required that material samples be submitted to protect the appearance of the area. The scheme is to provide for garaging for cars and ancillary space for the appellant, who owns the whole site. Such a location would not be appropriate for an independent unit of accommodation and I have therefore set conditions to ensure the future use of the ground and first floor are retained solely for the purposes set out in the application.
13. Otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the guidance in Circular 11/95:
14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Mike Robins

INSPECTOR