

Costs Decision

Hearing held on 28 February 2017

Site visit made on 28 February 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 19th May 2017

Costs application in relation to Appeal Ref: APP/Y3615/W/16/3155889 The Orchard, Puttenham Heath Road, Compton, Guildford GU3 1DU

- 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 N Giles for a full award of costs against Guildford Borough Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

The Submissions from Mr & Mrs Giles

2. The submissions were made orally at the Hearing as follows;
 3. The application has been made in accordance with the Costs paragraphs of the Planning Practice Guidance (ID: 16-[para No]-20140306). It is made in a timely manner in accordance with paragraph 35 and paragraph 30 sets out the circumstances when an award of costs may be made. The Council's behaviour was unreasonable in failing to determine the application and in failing to grant permanent permission, or a permanent personal permission. A full award of costs is sought.
 4. The nature of the Council's unreasonable behaviour is as set out in paragraph 48 and 49 of the Guidance. On the former, the correspondence at Appendix A4 to the appellants' Statement sets out the numerous attempts to resolve the situation during the Council's considerations, but there has been no explanation as to why permission was not granted. Additional personal information was not requested until late on in the consideration of the application, but was supplied within 8 days. Workload is not justification for delay.
 5. In paragraph 49 the appellants rely on the first bullet point '*preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations*'. In that there are very special circumstances, the proposal accords with national policy and the site is being identified in the preferred options stage of the emerging Plan. The Council were aware of the need for the Sensory Dayroom, and the link between the need for a permanent
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permission and the ability to provide that facility for the child. It is difficult to understand how permission could not be granted.

6. With regard to the fifth bullet point, '*acting contrary to, or not following, well-established case law*' the best interest of the child starts with section 11 of the Children Act and that best interest is to not delay a decision. The Council are in breach of that duty and that is unreasonable behaviour. The only alternative is to determine that the provision of the sensory dayroom is not in her best interest. The Council therefore acted unreasonably in bringing about this unnecessary appeal.
7. The appellants have made clear that there would be no appeal if either a permanent personal permission or a permanent non-personal permission was granted. Not issuing a decision is not in the best interest of the child and it is that delay that led to the appeal. The Council were fully aware of the need for the sensory dayroom and the idea that the balance is only tipped in favour of a temporary permission is not accepted.

The Response from Guildford Borough Council

8. The response was made orally at the Hearing, following the lunchtime adjournment, as follows;
9. It is unfortunate that the appellants did not present the submission in writing, but it is contended that the Council did not act unreasonably. Had the Council issued a Decision it would have been to grant a personal temporary permission and as the appellants contend that only a permanent permission is needed, this would still have resulted in an appeal. The case is complex but is not in accordance with the Development Plan and it is not clear that planning permission should have been granted. The issues are a matter of the weight to be attached to material considerations and the Council's stance is not unreasonable.
10. Whilst it is regretted that a Decision was not issued, there has been no unnecessary expense as the discussions at the Hearing would have taken place. The best interests of the child have been covered in the Council's written submissions and these are partly why a personal permission would have been granted. The separate sensory dayroom application has been refused.

Reasons

11. The Planning Practice Guidance 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.
12. There had been some discussion during the Hearing as to why the Council failed to determine the application and why the appellant felt obliged to make the appeal. The facts are however that had the Council issued a Decision within the prescribed period it would have been for a further temporary permission, and the evidence of the appellants is that this would not have been sufficient to allow them to develop the sensory day-room. There is no suggestion that this 'after the event' position regarding what would have been granted is other than the truth.

13. There has clearly been some delay, but on the basis that a temporary personal permission would not have been acceptable, it is reasonable to assume that such a grant of permission would have been appealed against under section 78(1)(a) of the 1990 Act. In addition, the sensory day room is not ready and waiting to be built as the application reference 16/P/00194 was found not to be acceptable on Green Belt grounds.
14. With regard to the best interests of the child, the decision made in respect of the sensory day room is not a matter for this Costs Decision or the accompanying Appeal Decision, but the Council's assertion that only a temporary personal permission would have been issued would have had some adverse effects, as has the resulting delay. At the same time, there does not appear to have been a risk of the family having to leave the land so that there would be continuity of education and family life. The appellants' reference to section 11 of the Children Act is to other legislation and whilst a finding against the Council in that respect may have carried weight in the present considerations, no such findings have been made.
15. Nevertheless, the timely issue of a decision, albeit not wholly as sought by the appellants, would have provided a degree of certainty and the failure to make that decision within the prescribed period was unreasonable behaviour, particularly in view of the amount of correspondence on file during that period, and the quick response given by the appellants to a late request for information.
16. As is made clear at ID: 16-030-20140306 of the Guidance, for costs to be awarded, not only has unreasonable behaviour had to have occurred, but in addition, this must have directly caused the other party to incur unnecessary or wasted expense in the appeal process.
17. On the basis that an appeal appears to have been inevitable, it is not possible to conclude that wasted or unnecessary expense has been incurred. Whilst there was unreasonable behaviour, unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and the application is refused.

S J Papworth

INSPECTOR