

Costs Decision

Hearing held on 18 April 2017

Site visit made on 18 April 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 24th May 2017

Costs application in relation to Appeal Ref: APP/R3650/W/16/3161400 Shamley Wood Estate, Woodhill Lane, Shamley Green, Surrey GU5 0SP

- 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 Merriman for a full award of costs against Waverley Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for re-routing of part of driveway.
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Decision

1. The application for an award of costs is refused.

The submissions for Mr R Merriman

2. A costs application was submitted in writing at the Hearing and was also presented orally by Mr Ellis, on behalf of the appellant. It was confirmed that the Council had received the application on the afternoon of 13 April 2017, the day before the bank holiday weekend.
3. The appellant contends that the Council acted unreasonably not explaining or demonstrating the actual harm the proposal would cause, failing to explain how openness would not be preserved, introducing a new reason or refusal namely in the allegation that the proposal conflicts with one of the five purposes of including land within the Green Belt, failure to explain why permission has been granted for similar development elsewhere in the borough and why it does not accept the reasoning of a previous Inspector¹. Furthermore, that the Council failed to give weight to environmental benefits and has failed to take into account material considerations.

The response by Waverley Borough Council

4. The Council responded with a written response that was also presented orally at the Hearing by Mr Bryson on behalf of the Council. In response to the appellant's claims, the Council consider that the officer report provides a full detailed assessment of the Green Belt and character and appearance issues. That the Council's view on openness is adequately explained and that previous decisions were taken into account but they pre-date the National Planning Policy Framework ('the Framework'). Moreover, that each case must be determined on its own merits.

¹ APP/R3650/A/10/2137530.

5. Furthermore, that it has not raised a further reason for refusal, merely that the Council's statement was drawing upon the five purposes of including land within the Green Belt as previously set out and that encroachment is a matter of planning judgement.
6. The Council also refer to the consultation response from the Surrey Hills AONB Officer and contend that the policies have been applied with the appropriate weight and that the environmental benefits were given weight in the overall consideration of the proposal within the officer report and subsequently at appeal.

Reasons

7. The Planning Practice Guidance ('PPG') 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.
8. The Council's reasons for refusal set out in the decision notice are complete, specific and relevant to the application. They also clearly state the policies of the development plan that the proposal would conflict with, which the parties agreed at the Hearing are in accordance with the most up-to-date national policy.
9. Although I have drawn a different conclusion on the effects of the proposal in my decision, I did not find any of the Council's concerns to be vague, generalised or inaccurate and took account, amongst other things, of the contribution the appeal site makes to the character and appearance of the area and the benefits of the scheme.
10. I consider that although not explicitly referred to in the reason for refusal, the Council's concerns were clearly based on the physical encroachment of development into an otherwise undeveloped parcel of land. Assessment of the effect in terms of the five purposes is a requirement of the second limb in paragraph 90 of the Framework and is referred to in the officer report and statement of case. In any reasonable assessment of the appeal proposal the appellant would have to include consideration of this second limb when preparing the appeal, mindful that the matter would also need to be addressed given my own inevitable questions in such terms, given the requirements of the development plan and the Framework.
11. Whilst I appreciate that the applicant does not agree with the Council's consideration of the development the reasons for refusal are inherently matters of planning judgement. Given their conclusions, which I am satisfied were properly reached, an appeal was inevitable.
12. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason an award for costs is not justified.

Richard Aston

INSPECTOR