



Costs Decision

Inquiry held on 21, 22, 23 & 24 March and 13 & 14 June 2017

Site visit made on 15 June 2017

by Roger Clews BA MSc DipEd DipTP MRTPI

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

Decision date: 26 July 2017

Costs application in relation to Appeal Ref: APP/D3640/W/16/3158822 Land at Heathpark Wood, East of Heathpark Drive, Windlesham, Surrey GU20 6AR

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Charles Church Southern Ltd & Sentinel Housing Association for a full award of costs against Surrey Heath Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of up to 140 dwellings and community facilities, with associated landscaping, open space, car-parking and access from Woodlands Lane, and use of land to provide publicly accessible recreation space (SANG).
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Decision

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

The submissions for Charles Church Southern Ltd & Sentinel Housing Association

2. The costs application was submitted in writing. The following additional points were made orally following the Council's response: The Council's case had not always relied on saved policy H8, although they may have recognised as a fact that it was relevant to the case. In determining this costs application the inspector will need to assess whether there is any basis to distinguish this case from the two previous appeals at West End, or to support the Council's contention that they had always considered the inspectors' approach to those cases to be wrong.

The response by Surrey Heath Borough Council

3. The response was also submitted in writing and was read out at the inquiry.

Reasons

4. The national Planning Practice Guidance makes it clear that an award of costs may only be made when a party has behaved unreasonably and that unreasonable behaviour has caused another party to incur unnecessary or wasted expense. The appellants' principal charge is that the Council acted unreasonably in refusing planning permission and thus put the appellants to unnecessary and wasted expense in making the appeal.
5. The Council refused permission for four reasons. Reasons 3 and 4 were capable of resolution by the submission of a section 106 agreement and an

agreement was submitted at the opening of the inquiry. The Council did not pursue reasons 3 and 4 at the inquiry and they form no part of the appellants' grounds for seeking costs.

6. Reason 2 concerned the appellants' alleged failure to demonstrate the presence or otherwise of protected species and the extent to which they might be affected by the proposed development. That is a requirement of national and local planning policy. Natural England and the Council's principal local ecology advisor, the Surrey Wildlife Trust [SWT], had no outstanding objections to the proposed development when the Council determined the application. But concerns were raised directly with the Council in correspondence from the Surrey Bat Group [SBG] and the West Surrey Badger Group [WSBG], who themselves provide advice to SWT.
7. Between the submission of the appeal and the opening of the inquiry the appellants' ecology consultants, Ecology Solutions [ES], carried out additional check surveys which they submitted to the Council. Having considered that additional evidence the Council decided not to pursue reason for refusal 2 at the inquiry. This was an outcome that had been anticipated in the Council's statement of case.
8. However, by that point the Rule 6 party, Windlesham Heathpark Wood Group [WHWG] had submitted their statement of case. In it they drew attention to what they saw as the incompleteness of the appellants' original surveys. They instructed their own ecology witness to prepare and present evidence at the inquiry, which in part drew on the concerns raised by SBG and WSBG. It will be apparent from my decision on the appeal that I considered the ecology issues raised by WHWG to be substantial ones which required examination at the inquiry.
9. Therefore, even if the Council had withdrawn reason for refusal two as soon as they had received the additional ecology information from ES's check surveys, it would still have been necessary for the ecology evidence to be heard at the inquiry in order for me to reach a decision on the appeal.
10. Reason for refusal 1 drew attention to the site's status as safeguarded land and the policy requirement that its permanent development for housing should only be permitted following a local plan review. It claimed that the site's release would therefore conflict with the spatial strategy, Core Strategy policies CP1 and CP3, and the NPPF.
11. It is unfortunate that reason 1 did not refer in terms to saved policy H8, as it is that policy which gives the appeal site its safeguarded status. Nonetheless, the reference in reason 1 to that status, and the associated policy requirement, made it reasonably clear that in refusing permission Council members had in mind the provisions of that policy and of NPPF paragraph 85 with regard to safeguarded land. Subsequently, both the Council's statement of case and their planning witness's proof referred specifically to policy H8 and the fourth bullet point of NPPF paragraph 85. The appellants would have been in no doubt that local and national safeguarded land policies were in play in the appeal.
12. Neither of the two previous appeal decisions on safeguarded land sites in the Council's area, at West End, mentions the fourth bullet point of NPPF paragraph 85 or the reasoned justification to policy H8. There is no evidence that those

decisions specifically considered the apparent conflict with the policy requirement that safeguarded land should not be released for development until after there has been a local plan review. It may be that the issue was raised at the hearings for those cases, as the appellants say, but that is not evident from either decision letter.

13. Against that background, I find nothing unreasonable in the Council's reliance on that policy requirement in this inquiry. It was not a situation in which they were ignoring a clear precedent set by appeal decisions in similar cases. Moreover, as will be seen from my decision on this appeal, after considering relevant case law I took the view that the NPPF's safeguarded land policies indicate that development should be restricted, notwithstanding the lack of evidence that any other appeal decisions support that position.
14. The Council's case in respect of reason 1 could perhaps have been made with greater clarity by their planning witness but it was put forcefully in submissions by their advocate. It raised substantial policy issues that required examination at the inquiry in order to inform my decision on the appeal.
15. Drawing all these points together, I find that the Council produced substantial evidence to support reason for refusal 1, on which they relied, and that substantial evidence to support reason 2 was put to the inquiry by WHWG. In neither case was there evidence of a previous appeal decision which indicated clearly that the reason could not reasonably be upheld. Accordingly, although I have found against the Council and WHWG in my decision on the appeal, this is not a case in which the Council acted unreasonably in refusing planning permission.
16. I conclude that no unreasonable behaviour by the Council which caused the appellants to incur unnecessary or wasted expense has occurred. No award of costs should be made.

Roger Clews

Inspector