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## Costs Decision

Site visit made on 5 September 2017

by **Andrew Hammond MSc MA CEng MIET MRTPI**

**Decision date: 04 October 2017**

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### **Costs application in relation to Appeal Ref: APP/B3600/X/16/3160668 Land West of Sheepwalk, Sheepwalk, Shepperton, Middlesex.**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
  - The application is made by Surrey County Council for a full award of costs against Symbiotic LLC.
  - The appeal was against the refusal of a certificate of lawful use or development for deposit of at least 18 inches of topsoil on the land.
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### **Decision**

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

### **The Case for Surrey County Council**

2. The Council contend that the appellant behaved unreasonably in appealing against the decision to refuse a certificate of lawful development whilst failing to produce any evidence to suggest that Condition 4 of planning permission 3929 had not been fulfilled despite the burden of proof lying with the appellant.
3. The Council have, therefore been subjected to unnecessary expense in the appeal process.

### **The Case for Symbiotic LLC**

4. The trial holes were dug with the agreement and cooperation of the Council and demonstrated doubt as to whether the condition had been fulfilled and some of the evidence adduced by the Council also threw doubt on whether restoration work had been completed.
5. The Council has not wasted costs on dealing with an appeal with an entirely reasonable basis.

### **Reasons**

6. 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.
7. The Council's case was twofold and also related to the suggestion that the deposit of top soil could not be carried out lawfully as other uses of the land had supplanted the pit filling use. That assessment has been found to be unjustified.

8. Although in the event not conclusive, the appellant did produce evidence which, it was claimed, demonstrated that Condition 4 had not been complied with, namely the results of the trial holes and the poor quality of flora on the appeal site. Notwithstanding that the appeal was unsuccessful; the appellant was justified in pursuing the appeal on the basis of that evidence. The appellant did not, therefore, act unreasonably in pursuing the appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Andrew Hammond*

Inspector