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# Costs Report to the Secretary of State for Housing, Communities and Local Government

by Clive Hughes BA(Hons) MA DMS MRTPI

an Inspector appointed by the Secretary of State

Date: 1 March 2018

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**TOWN AND COUNTRY PLANNING ACT**

**GUILDFORD BOROUGH COUNCIL**

**APPEAL BY**

**WISLEY PROPERTY INVESTMENTS LIMITED**

**APPLICATION FOR COSTS BY**

**COBHAM CONSERVATION & HERITAGE TRUST**

**AGAINST**

**WISLEY PROPERTY INVESTMENTS LIMITED**

Inquiry Opened on 19 September 2017

Wisley Airfield, Hatch Lane, Ockham, Surrey GU23 6NU

File Ref: APP/Y3615/W/16/3159894

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**Wisley Airfield, Hatch Lane, Ockham, Surrey GU23 6NU**

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Cobham Conservation & Heritage Trust for a full award of costs against Wisley Property Investments Limited.
- The inquiry was in connection with an appeal against the refusal of planning permission for the phased development of a new settlement of up to 2068 dwellings incorporating up to 60 sheltered accommodation units and 8 gypsy and traveller pitches and associated infrastructure including accesses onto the A3 (Ockham Interchange), Ockham Lane and Old Lane and revised access to Elm Corner, a secondary school, a primary school, community provision, nursery provision, health facility, a local centre (incorporating food & drink, retail, a visitor centre and offices), employment area, sports and recreational facilities (incorporating a floodlit sports pitch and pavilion). Sustainable Drainage Systems and an area of Suitable Alternative Natural Greenspace incorporating a landform feature and car parking. The erection of associated utilities infrastructure. The development proposal to incorporate the demolition/ removal of the runway and VOR Beacon (and any associated outbuildings).
- The inquiry sat for 21 days between 19 September and 25 October 2017.

**Summary of Recommendation: That the application be refused.**

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**The Submissions for Cobham Conservation & Heritage Trust**

1. The application was made in writing (ID131).
2. The applicant endorsed the application made by Wisley Action Group & Ockham Parish Council. In brief, that application alleges that the Appellant acted unreasonably by making this appeal which has caused the applicants wasted costs in resisting it. The Planning Practice Guidance (PPG)<sup>1</sup> says that the right of appeal should be exercised in a reasonable manner; an appellant is at risk of an award of costs against them if the appeal has no reasonable prospect of succeeding. This appeal was bound to fail for two reasons. First, the Appellant never had a solution to the highways issues. The Appellant accepted that the scheme would cause a severe impact on the strategic road network. Suitable mitigation has not been agreed with Highways England (HE). The necessary assessment, as required by HE, has not been carried out.
3. Second, the Appellant's Green Belt case would also fail. The PPG says<sup>2</sup> unmet housing need, including traveller sites, is unlikely to outweigh harm to the Green Belt and other harm to constitute the necessary very special circumstances (VSC). Almost all the other material considerations advanced by the Appellant arise from the benefit of housing and its ancillary (and also inappropriate) development. While much of the site is previously developed land it is nonetheless open and so does not justify the new buildings. The emerging Local Plan has not been endorsed by an Inspector and so it cannot add sufficient weight to a case so as to amount to VSC.
4. Rule 6 parties raised these concerns before and at the opening of the Inquiry and warned that the appeal was bound to fail. The Appellant chose to press on. This

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<sup>1</sup> Planning Practice Guidance ID: 16-053-20140306

<sup>2</sup> Planning Practice Guidance ID: 3-034-20141006

has caused the applicants wasted expenditure. All the Rule 6 parties should be able to recover their costs.

5. The applicant added that there was no prospect of the appeal succeeding without agreement with HE; without being able to show that the harm to the Green Belt and other harm could be outweighed by VSC; and without being able to give other than limited weight to the emerging Local Plan.

### **The Response by Wisley Property Investments Limited**

6. The response was made in writing (ID133). A single response was made in respect of the points made in all the five applications made against the Appellant.
7. In brief, the Appellant said that the applications were ill-judged and misconceived. The test of unreasonable behaviour is a deliberately high test. It was not contested that the planning application was made to support the allocation of the site in the emerging Local Plan (eLP). Guildford Borough Council (GBC) chose to take the application to Committee; but for serious delays by GBC the eLP would have been adopted. It is also relevant that GBC refused the application on 14 grounds but only defended two of them at appeal, and accepted that one of those would not, of its own, justify refusal. The pursuit of the appeal has resulted in the Appellant removing 12½ of the reasons for refusal and resulted in Natural England and Surrey County Council removing their objections.
8. Concerning the Green Belt, the Courts have held<sup>3</sup> that unmet housing need, on its own, is unlikely to outweigh the harm to the Green Belt. It is clear that it could, therefore, constitute a VSC. A submission that the appeal is bound to fail, therefore, is wholly erroneous and based upon a flawed understanding of national policy as interpreted by the Courts. In Lee Valley the Judge said<sup>4</sup> that it could be treated as one of a number of VSCs. The Appellant's VSC case was not wholly based upon housing; most of the matters are not based upon housing at all. In respect of the two matters that the applicants accept are not housing based the applicants have merely restated their case and not found unreasonable conduct.
9. The Courts have held<sup>5</sup> that the Green Belt boundary does not need to be altered before development is permitted. The applicants' case would take away the right of appeal in Green Belt cases, contrary to policy and the Act. In any case what defines VSC is a matter of planning judgement; there can be no suggestion that the appeal was bound to fail. This cannot be any basis for a costs application.
10. Concerning the highways issue, HE had not indicated that they would attend the Inquiry; they had not attended the Pre-Inquiry Meeting. Their late involvement in the Inquiry added to pressure; this was not the Appellant's fault.
11. There is nothing unreasonable about appealing a refusal of planning permission where statutory consultees have objected and continue to maintain an objection. During an Inquiry discussions can continue to reduce or remove objections. Work still continues to resolve HE's objections; this work will continue until the SoS determines the appeal. The Appellant is confident that by then the issues raised by HE will have been resolved. Only the Burnt Common slip roads remain

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<sup>3</sup> *Doncaster MBC v SoSCLG and AB* [2016] EWHC 2876 (Admin)

<sup>4</sup> *R (Lee Valley Regional Park Authority) v Broxbourne BC* [2015] EWHC 185 (Admin)

<sup>5</sup> *R (Luton BC) v Central Bedfordshire Council* [2015] JPL 1132

at issue as all the other HE points are agreed in principle by HE. If HE's objection is resolved by the time the appeal is determined this ground would fall away.

12. These slip roads are the mitigation included in the eLP and extensively covered in the evidence base. The applicant has not objected to the slip roads. The impact on the strategic road network is an issue on which no Rule 6 party called any evidence. The highways witness for East & West Horsley Parish Councils left this matter to HE. None of the applicants incurred any costs directly related to the strategic road network.

## Conclusions

13. The PPG 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.
14. The starting point for the determination of this application for costs is that the Appellant has always been intent on pursuing a plan-led scheme. When the planning application was submitted, in December 2014, GBC's estimates for the eLP's timetable were as set out in the Local Development Scheme 2014 (CD8.41). This envisaged that the eLP would be submitted to PINS in March 2015; that the Examination in Public (EiP) would be in October 2015; and that it would be adopted in July 2016. At the time the eLP sought to take the southern part of the appeal site, and some further land to the south, out of the Green Belt and redevelop Wisley Airfield with a residential-led scheme, similar to that now proposed. It was reasonable, therefore, for the Appellant to pursue the application in the expectation that by the time it was determined the eLP would have been adopted.
15. The eLP has not progressed in accordance with that timetable and at the time of the Inquiry it was anticipated that the Regulation 22 version of the eLP would be submitted to PINS in December 2017 with the EiP in April 2018 and adoption in December 2018 (CD8.43). The boundaries of the relevant allocation have been amended in the intervening period to include all the appeal site together with some land to the south and south-east. In addition, a further policy (Policy A43a) has been included in the eLP which seeks the provision of north facing slip roads at Burnt Common. The applications for costs have to be considered against this background.
16. While I have recommended that the appeal should be dismissed, these costs applications hinge on whether the Appellant has acted unreasonably in pursuing the appeal. There is no dispute that the applications for costs have been made at the appropriate time or that the applicants have incurred costs.
17. There are two main arms to the applications for costs, relating to the impact on the strategic road network and to Green Belt issues.
18. The strategic road network is managed, under license, by HE. HE attended the Inquiry as a Rule 6 party and raised objection to the provision of the north facing slip roads at Burnt Common. It is not an objection in principle but HE requires further information. Their provision is a requirement of the development of Wisley Airfield in Policy A35 of the eLP and also the subject of a separate eLP

- policy (Policy A43a). In closing submissions, GBC described their provision as "...critical to the delivery of growth within the Borough..."<sup>6</sup>.
19. It is very unfortunate that some of the off-site parts of the scheme were amended so close to the opening of the Inquiry meaning that HE, and others, were not able to fully consider the proposals before the Inquiry. However, these slip roads are the only outstanding highway issue between the Appellant and HE and their provision is supported by GBC and SCC.
  20. The slip roads are to be provided as part of the off-site highway mitigation measures. At the close of the Inquiry it had not been demonstrated that they can be provided. Without them the highways impact of the development would be severe and this is one of the reasons for the recommendation that the appeal is dismissed. Nonetheless, it is possible that the issue between the Appellant and HE will have been resolved before this appeal is determined. In all these circumstances, and taking account of the support for the slip roads in the eLP, by GBC and SCC I do not consider that the Appellant acted unreasonably in pursuing the appeal.
  21. With regard to the Green Belt, any proposals involving Green Belt and the consideration as to whether other material considerations amount to VSC inevitably includes a certain amount of planning judgement. While I have not agreed with the Appellant that the list of 14 other material considerations that were advanced comprises the necessary VSC that does not inevitably make the pursuit of them unreasonable. If that were the case then any appellant in the Green Belt would be at risk of an application for costs being made against them and that cannot reasonably be the intention of the costs regime.
  22. In this case there is undoubtedly a high degree of overlap between the various matters raised, and many stem from the benefits arising from providing housing in an area with a limited supply. However, they are not all solely related to housing. In any case it must be borne in mind that the circumstances of the Borough are such that there is insufficient urban land to meet even the lowest of the housing requirement estimates. While the exact requirement will not be known until the Inspector's report is published following the EiP, probably in the middle of 2018, for now the lack of suitable sites remains acute. About 89% of the Borough comprises Green Belt meaning that it is probable that some land will need to be released from the Green Belt to meet any identified need.
  23. I do not consider that it is inevitable that this appeal would fail on Green Belt grounds or that its location within the Green Belt, in advance of any determination on whether it should be taken out of the Green Belt, made the appeal hopeless. The Appellant put forward a credible case for the development in the Green Belt including a raft of matters that were, when taken together, considered to comprise the necessary VSC. I have not agreed with the Appellant's conclusion but that does not mean that the Appellant was unreasonable to pursue the appeal in advance of the adoption of the eLP.
  24. I am not convinced that it has been shown that there was any unreasonable behaviour by the Appellant or that the Appellant's behaviour resulted in any unnecessary or wasted expense. I therefore find that unreasonable behaviour

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<sup>6</sup> Closing submissions on behalf of Guildford Borough Council: ID120 paragraph 32

resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and so an award of costs is not justified. I therefore **recommend** that the application be refused.

*Clive Hughes*

Inspector