



Costs Decision

Site visit made on 7 May 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2019

Costs application in relation to Appeal Ref: APP/D3640/W/19/3221146 18 & 18a Tekels Park, Camberley GU15 2LF

- 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 Lux Homes Ltd for a partial award of costs against Surrey Heath Borough Council.
 - The appeal was against the refusal of planning permission for the erection of one building containing 10 apartments following the demolition of existing buildings.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance 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.
3. The Applicant submits that the Council has acted unreasonably referring to insufficient parking in the refusal reason when the amount provided accorded with the parking standards referred to in the Council's adopted parking guidance. Furthermore, it acted contrary to the advice of its professional officers and the Highway Authority without good reason. It therefore failed to substantiate the objection on the grounds of harm to highway safety and referred to policies and guidance that related principally to design rather than the amount of parking that should be provided.
4. Planning Practice Guidance further indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal or if they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the Council's officers concluded that the degree of on-site parking proposed was acceptable, and furthermore it accorded with the quantum of parking suggested in the Surrey County Council Vehicular and Cycle Parking Guidance (January 2018) (Parking Guidance).

6. The single refusal reason predominantly refers to matters relating to the character and appearance of the area. However, it also explicitly refers to "insufficient parking for the number of proposed units which may result in on-street parking overspill and may conflict with the private estate's road network and associated residential amenities."
7. It follows that this element of the refusal reason stems from the amount of off-street parking provided by the development. Although the Council have general concerns that the lack of pavements and the surrounding topography would discourage visitors from walking to the development, it remains unclear what quantum of visitor parking the Council consider would suffice. Little robust evidence has been provided to show that the 2 visitor spaces proposed would be inadequate such that a highway safety problem would result from overspill parking. Nor has the alleged harm to residential amenity been substantiated other than by means of a vague assertion about increased inconvenience.
8. Whilst I acknowledge that the parking guidance document does not have the same status as policy and allows for some flexibility to take account of individual circumstances, it is fairly recent, and as such, might be generally relied upon as a reasonable basis for the quantum of parking to be provided. The Council point out the limited nature of the comments provided by the Highway Authority given that the development is served by a private road. Nevertheless, in taking a different view to the expert advice and the adopted parking guidance, it is reasonable to expect that this is based on an objective analysis and amount to more than opinion.
9. It appears to me that having regard to the provisions of the development plan and national planning policy, this element of the refusal reason was not adequately substantiated. As such, this amounts to unreasonable behaviour contrary to the guidance in the PPG.
10. Given that the refusal reason relates to the amount of parking being insufficient in terms of quantum, I understand why the applicant found it necessary to produce additional specific technical transportation evidence in relation to the impact on local road networks, traffic movements, parking standards and the relevant advice in the National Planning Policy Framework. In relation to this specific work prepared for the appeal there is a direct causal link from the unreasonable behaviour of the Council, and as such it does amount to unnecessary expense.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Surrey Heath Borough Council shall pay to Lux Homes Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the preparation of evidence

relating to parking provision and highway safety; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Surrey Heath Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Helen O'Connor

Inspector