



Costs Decision

Site visit made on 3 September 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2019

Costs application in relation to Appeal Ref: APP/R3650/W/19/3228918 Waverley Folly, St Georges Road Badshot Lea GU9 9NT

- 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 Alice Brighton on behalf of Welbeck Strategic Land LLP for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of outline planning permission for residential development including details of access and associated works. Some matters reserved (Layout, Scale, Appearance and Landscaping),
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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 (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.
3. The Applicant's claim relates principally to what she perceives as an un-cooperative approach on the Council's part in resolving issues connected with the application, in particular access, resulting in the need for appeal proceedings; a failure to provide substantive evidence to support the reasons for refusal; vague and unsubstantiated claims about the impact of the proposals; and whether the Council has been consistent in its handling of the Applicant's proposal compared with an application for housing development on an adjacent site.

Background

4. The proposal subject of the appeal was submitted in March 2018 and determined in November the same year. The Applicant had received advice from the Council prior to the submission of the application, in which the importance of achieving a single point of access from St Georges Road was highlighted, a specific requirement of the Farnham Neighbourhood Plan.
5. In February 2018 a planning application was made by another party for the development of 94 houses on an adjacent site, known as Little Acres. There is also another site comprising the Neighbourhood Plan housing allocation, known as the Surrey County Council land, although at the time no planning application had been made for the site. An objective of the Neighbourhood Plan was to

ensure that only one point of access from St Georges Road would be provided to serve all three sites.

6. The planning application for the Little Acres site proposed to use the existing access, suitably improved, but did not make provision for access to the other sites. The difficulty of using this access to service the Applicant's site was compounded by the existence of ransom strips retained by the former owner of the land. The matter was brought to the attention of the Council by the Applicant before the other application was determined in October 2018, as a result of which the Council imposed a planning condition requiring details of how access would be provided to serve both sites to be agreed prior to the commencement of the other development.
7. The appeal proposal continued to propose a separate access from St Georges Road and the Council subsequently refused planning permission for the Applicant's site. There were no objections to the proposed separate access to the appeal site from the County Highways Authority. In refusing planning permission for the proposal, the Council relied on issues of character and appearance, and failure to comply with Neighbourhood Plan policy.
8. The crux of the dispute is the matter of the access arrangements. However, there are a number of other points of disagreement between the applicant and the Council over the form of the proposal, how these were addressed in the planning officer report, translated into the reasons for refusal and whether the Council has provided proper justification of its reasons in response to the appeal.
9. The Applicant has concerns over the way in which the Council handled the planning application for the Little Acres site compared with the appeal proposal. I have insufficient information before me on the circumstances relating to the other case to enable me to reach any conclusion regarding that aspect of the claim.

The Council's approach to holding a meeting

10. The Applicant made several attempts to engage in discussions with the Council as to how the issue of a joint access could be addressed, including the submission of a plan showing a combined access. These are catalogued by the Applicant in the claim¹. Whilst not all the correspondence related to requests for a meeting, the Applicant sought a meeting to discuss the position regarding the access and other matters around five times without success. The Council does not appear to have been willing to meet with the Applicant to discuss the matter prior to the determination of the application, a point not rebutted by the Council in its response to the claim for costs.
11. Prior to the determination of the application, in an effort to address the Council's concerns regarding the visual impacts, the Applicant submitted photographic montages to give an impression of effect on the character and appearance of St Georges Road. In addition, a comparison of the amount of hardstanding which would result if the proposal were to proceed compared with the existing situation was provided. These formed the basis for the Applicant's case that the proposed new access would be an improvement on the current situation. It is not clear what the response of the Council's Design Officer was

¹ See applicant's Appendix 1

to these submissions and the Applicant has not been able to have sight of these comments.

12. The Applicant made efforts, post decision, to discuss matters further with the Council to seek a solution to the access issue² and a meeting was suggested on around 4 occasions. These requests for a meeting were also not responded to positively by the Council.
13. Once the Applicant had decided that an appeal would be necessary, the Council was not able to provide comments on a Section 106 agreement to cover infrastructure contributions sufficiently quickly, therefore an agreement was submitted with the appeal in unilateral form. That undertaking was not acceptable to the Council in a number of respects and was, during the appeal process, replaced with a bilateral Section 106 agreement. The costs claim catalogues³ the email correspondence between the Applicant's solicitor and the Council seeking comments on the draft agreement.

The Council's evidence in support of the reasons for refusal

14. The Council has largely relied on the planning officer report in its response to the appeal. With regard to the first reason for refusal on the harm to the character of the area which would result from the new access, the Council's statement adds little to the comments in the report.
15. On the second reason for refusal, which asserts that the inclusion of the new access would result in an inefficient use of the site for residential purposes, the Council's case is essentially that the proposal does not represent a 'holistic approach' to the delivery of the allocated site. The Council dismisses the Applicant's point about the existence of the ransom strips by stating that it had attached a planning condition to the Little Acres permission preventing development of that site until details of the access to the remainder of the allocated site (planning condition 26) had been approved. The Council has not provided an update on the position in the appeal, although given that the Little Acres development is underway it must be assumed that condition 26 has been discharged.
16. It is not clear from either the planning officer report or the Council's statement of case to what extent the provision of a new access has on the development capacity of the site, and whether this would represent an inefficient use of the land. Neither is it clear how the Council considers that the Applicant should now resolve the issue of the ransom strips and achieve what the Council would consider a holistic approach to the delivery of the Neighbourhood Plan allocation.
17. The Council says in its response to the claim for costs that it had made clear to the Applicant that it would not support the proposal due to fundamental design issues with the access and suggests that it is the lack of dialogue with other landowners that resulted in the refusal on these grounds. That may be the Council's view on the matter. However, it does not explain the reluctance to meet the Applicant, if only to explain the position of the Council.
18. The third reason for refusal relates to the proposed provision of the local play area to serve the development within the retained open land with the

² See Appendix 2 of the applicant's claim

³ See Appendix 3

application site but outside the allocation in the Neighbourhood Plan. The Council makes clear in its statement that its rationale in this matter is essentially on the point of principle that such provision should be made within the land allocated for development and not within open countryside. It states that it considers that the use of the land for a play area would harm the intrinsic character of the countryside. It does not go further on this point, for example it does not respond to the Applicant's point that the provision of play space within the countryside would not normally be regarded as inappropriate, or explain why Policy FNP1 of the Neighbourhood Plan, or the Council's Residential Extension SPD, or Policies D1 and D4 of the Waverley Borough Local Plan, none of which were not identified in the planning officer's report as policies of relevance, are referred to in the reason for refusal.

Conclusions

19. The PPG is clear that costs cannot be claimed for expenses incurred as part of the determination of a planning application. However, actions at the time of the planning application can be taken into account if the applicant has proceeded to make an appeal.
20. With regard to the Council's approach to holding a meeting to discuss the key issues prior to determining the application, it is not unusual for applicants for planning permission to request face to face meetings with planning officers to discuss issues relating to their applications. At times Council's may see there as being limited value to such discussions and it being a better use of resources to deal with matters via correspondence or phone calls. However, given the complex nature of the issues in this case there would have been a purpose to such a meeting or meetings, namely seeking to secure an acceptable arrangement for the access of the site, such that all parts of the Neighbourhood Plan allocation could be delivered. Ultimately, the Council's failure to enter into discussions and rather refuse planning permission left the Applicant with very few options other than to appeal.
21. With regard to the other aspects of the claim, the Council has not provided robust evidence to support its reasons for refusal in relation to whether the proposal would represent an efficient use of the site, and in relation to the location of the play area it has introduced policies and other matters in the refusal reason without any explanation to their relevance to the matter.
22. Therefore, for the reasons given above I find that the Council acted unreasonably in not engaging in meaningful discussions with the Applicant prior to determination and in respect of the evidence put forward during the appeal to support its case. I therefore find the Council's actions to be unreasonable both substantively and procedurally. As a result, the Applicant was put to unnecessary expense in preparing the case for appeal.

Costs Order

23. 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 the Waverley Borough Council shall pay to Alice Brighton on behalf of Welbeck Strategic Land LLP, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. The applicant is now invited to submit to the Waverley 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Tim Wheeler

INSPECTOR