
Costs Decisions

Site visit made on 9 December 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2019

A - Costs application in relation to Appeal Ref:

APP/Y3615/W/19/3236780

Send Hill Farm, Potters Lane, Send GU23 7JJ

- 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 Mr Russell Elrick for a full award of costs against Guildford Borough Council.
 - The appeal was against the grant subject to conditions of an approval for reserved matters application pursuant to outline application 18/P/00696 approved on 06/07/18 to consider appearance, landscaping, layout and scale.
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B - Costs application in relation to Appeal Ref:

APP/Y3615/W/19/3236780

Send Hill Farm, Potters Lane, Send GU23 7JJ

- 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 Guildford Borough Council for a full award of costs against Mr Russell Elrick.
 - The appeal was against the grant subject to conditions of an approval for reserved matters application pursuant to outline application 18/P/00696 approved on 06/07/18 to consider appearance, landscaping, layout and scale.
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Costs Application A

Decision

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

Reasons

2. The National 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 or wasted expense in the appeal process.
3. PPG also provides examples of unreasonable behaviour by local planning authorities. These include providing information that is shown to be manifestly inaccurate or untrue, the failure to produce evidence to substantiate reasons for refusal as well as vague, generalised or inaccurate assertions unsupported by objective analysis. A further example is imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not

comply with the guidance in the National Planning Policy Framework on planning conditions and obligations.

4. The appellant considers that the Council have ignored historic appeal decisions, and this has led to an unnecessary appeal. However, the previous appeals at the site¹ related to outline planning permission where matters of scale and layout were not considered or the use of the workshop. Therefore, while it is indicated that a full award of costs was previously awarded against the Council, the considerations before me are materially different to the earlier appeals.
5. The appellant considers the Council have not demonstrated the exceptional circumstances required to justify the removal of permitted development rights having provided vague and generic reasons for imposing the disputed condition.
6. The Council have provided evidence to support their case for the imposition of the disputed condition. This required an element of judgement as to the impacts of potential developments at the site where permitted development rights were unfettered. While I did not agree with all the concerns that the Council put forward regarding the dwelling, I found that those relating to the effect of enlargements to the dwelling and erection of new outbuildings were justified. Therefore, I find the Council did not act unreasonably in this regard.
7. I understand the Council's concerns and reasoning for seeking to limit permitted development rights at the workshop. Notwithstanding this, unlike the dwellings, details of the workshop were known and agreed as part of the outline planning permission. Consequently, it is unreasonable to now seek to impose such limitations.
8. Given the condition also removed permitted development rights for the dwelling it is likely that an appeal would have followed even if the element relating to the workshop had not been included. However, I conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the workshop part of the appeal, is justified.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Guildford Borough Council shall pay to Mr Russell Elrick, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the workshop element of the disputed condition.
11. The applicant is now invited to submit to Guildford 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

¹ APP/Y3615/W/17/3186911 and APP/Y3615/W/18/3208075

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.

Costs Application B

Decision

12. The application for an award of costs is refused

Reasons

13. The 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 or wasted expense in the appeal process. It also provides examples of when an appellant will be at risk of an award of costs. This includes if the appeal or ground of appeal had no reasonable prospect of succeeding.
14. The Council consider the appellant had not demonstrated that the condition imposed was unreasonable and have not made reference to any specific planning policy to counter their case. The appeal submission included reference to planning policy and national guidance. I considered parts of the condition met the relevant tests and these have been retained. Nonetheless, I found that the appellant's case justified varying the imposed condition by removing certain restrictions. Therefore, the appellant did not act unreasonably, and the appeal was allowed.
15. The Council consider that the appeal was made in order to avoid the cost and uncertainty of future submissions. Whatever his reasons for choosing to submit an appeal, this avenue was open to the appellant. He is not obliged to make a formal submission or seek pre-application advice before doing so.
16. As a result, it follows that I cannot agree that the appellant has acted unreasonably in this case. As such, there can be no question that the Council was put to unnecessary or wasted expense.

Conclusion

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stuart Willis

INSPECTOR