
Costs Decision

Site visit made on 21 January 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Costs application in relation to Appeal Ref: APP/K3605/W/19/3239813 Fox Wood Estate, Burwood Road, Walton-on-Thames KT15 4ES

- 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 Fox Wood Management for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for replacement entrance signage, relocation of phone entry system and minor alterations to private access road.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour include preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant submits that the Council failed to take into account a fallback position that could be implemented under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) without sufficient justification, and therefore acted unreasonably in refusing the application for planning permission.
5. The Council's officer report on the application clearly acknowledges that erection of a wall of up to 1m in height would ordinarily be permitted, and states that this potential fallback position is afforded some weight. However, ultimately the report concludes that there are not very special circumstances which would be necessary to justify the development within the Green Belt.
6. The detail of the applicant's suggested fallback position is considered further within the Council's appeal evidence which agrees that this would be more harmful to the openness of the Green Belt than the appeal scheme. Nevertheless, the Council go on to explain why they consider the fallback to be dissimilar to the proposed development, and why it is considered unlikely that

such a fallback would be implemented. In this context, the Council hold that the fallback does not justify the development proposed.

7. I note the applicant's reference to correspondence from the Planning Inspectorate's Customer Quality Team¹ regarding the consideration of whether permitted development rights may be relied on as a fallback, and case law² suggesting that a fallback needs only to be a theoretical prospect to be taken into account. However, the assessment of whether or not a fallback position is a material consideration is not equivalent to the subsequent assessment of weight that should be given to any such potential fallback which will be a matter for the decision-maker according to the circumstances of a case.
8. While I have come to a different view to the Council on the weight afforded to the fallback position, from the information before me I cannot agree that the Council failed to take the fallback position into account. Having acknowledged the existence of a fallback position as a material consideration, the Council exercised reasonable planning judgement in considering the weight to be attributed to this fallback when balanced against the harm that the appeal proposal would cause to the Green Belt, taking account of the likelihood of implementation of the fallback and its similarity to the appeal proposal.
9. Given this, I am not persuaded that the Council's approach was inconsistent with the principles for consideration of fallback referred to by the applicant, or that the Council acted unreasonably in its consideration of the fallback position.
10. I therefore find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, for the reasons given above, the application for a full award of costs is refused.

J Bowyer

INSPECTOR

¹ Appendix 5 of the applicant's Statement of Case

² R (Zurich Assurance Limited) v North Lincolnshire Council [2012] EWHC 3708 (Admin)