



Costs Decision

Site visit made on 16 March 2020

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Costs application in relation to Appeal Ref: APP/Y3615/W/19/3239744 Land to the north of Hareward Road, Merrow, Guildford GU4 7HD

- 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 Anthony Broad (QQQ 33 Ltd) for a full award of costs against Guildford Borough Council.
 - The appeal was against the refusal of planning permission for erection of 5 no. dwellings, creation of new access, and associated drainage and landscape works.
-

Decision

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

Reasons

2. The Planning Practice Guidance¹ (the PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG² lists different types of behaviours which may give rise to a substantive and/or procedural award against local planning authorities.
3. The applicant is seeking an award of costs on substantive and procedural grounds. It is argued that the Council acted unreasonably in refusing the appeal proposal and in failing to submit an appeal statement to substantiate their reasons for refusal.
4. A decision made by the Planning Committee contrary to the Case Officer's recommendation does not in itself constitute unreasonable behaviour. Members are entitled to reach a different decision, as long as they do so whilst relying on substantive planning grounds. Although they initially indicated that they would submit a Statement of Case, the Council subsequently took the view that it was not necessary to provide a full statement and contacted the Planning Inspectorate to that effect. This was justified by the Council's intention to approve a planning application³ for a scheme identical to the appeal proposal, subject to the completion of a Section 106 legal agreement. The decision notice for this revised application was formally issued by the Council on 21 January 2020.
5. Despite the absence of statement of case from the Council, it is nevertheless apparent, having regard to the Case Officer's report, that the appeal development was found not to fully accord with local planning policies seeking

¹ Appeals (Paragraph: 030 Reference ID: 16-030-20140306).

² Paragraph: 049 Reference ID: 16-049-20140306.

³ Local Planning Authority Reference 19/P/01512.

- to protect open space and the Thames Basin Heaths Special Protection Area (SPA). It is also of note that objections were raised in that regard by the Council's Parks and Planning Policy Officers.
6. The minutes to the Planning Committee set out the reasons why the application subject to this appeal was considered unacceptable. Members of the Planning Committee did not act unreasonably as the weight attributed to the loss of open space and the benefits associated with the proposed scheme are to some extent a matter of planning judgment, including in respect of the tilted balance.
 7. As noted above, planning permission has recently been granted under delegated powers, for a scheme which is identical to the appeal proposal. However, in respect of this revised application, the applicant submitted an Open Space Assessment⁴ (OSA) and Landscape and Ecological Management Plan (LEMP), which provided additional supporting information in support of the proposed development and overcame the concerns previously raised by the Council. As the Members of the Planning Committee made their decision without the benefit of the OSA and the LEMP, I find that the Council did not act in an inconsistent manner in reaching different conclusions on both applications.
 8. The second reason for refusal relates to the effect of the development on the Thames Basin Heaths SPA. The Case Officer's report refers to the Appropriate Assessment (AA) undertaken as part of the application process and concludes in that regard that the integrity of the Thames Basin Heaths SPA would be safeguarded, subject to the completion of a Section 106 Legal Agreement prior to the determination of the planning application.
 9. As noted within the Case Officer's report, the completion of a Section 106 legal agreement would be required to secure financial contributions towards a Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) measures to preserve the integrity of the Thames Basin Heaths SPA. This is substantiated by the Thames Basin Heaths SPA Avoidance Strategy 2017 Supplementary Planning Document (July 2017). On this basis, the reference to the effect of the development on the Thames Basin Heaths SPA as part of the reason for refusal was justified to ensure that it is addressed accordingly as part of a subsequent appeal or revised application. In the absence of adequately secured mitigation measures, such as through the completion of a planning obligation, there is no certainty that the development proposal would not prejudice the integrity of the Thames Basin Heaths SPA.
 10. In referring to the absence of an AA within their second reason for refusal, the Council acted unreasonably. Nevertheless, for an award of costs to succeed, such behaviour must have also resulted in unnecessary or wasted costs for the claimant. I have not, however, been provided with any substantive evidence suggesting that the applicant has occurred unnecessary or wasted costs which would have been caused by the reference to the absence of an AA within the Council's reason for refusal.

⁴ Open Space Assessment prepared by The Environment Partnership (Document Reference 7713.001, dated July 2019).

11. For these reasons, I find that unreasonable behaviour or wasted expense, as described in the PPG, has not been established. On this basis, an award of costs is not justified.

S Edwards

INSPECTOR