



Costs Decision

Site visit made on 6 October 2020

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 26 October 2020

Costs application in relation to Appeal Ref: APP/Y3615/W/20/3250004 5 Guildford Business Park, Guildford Business Park Road, Guildford GU2 8XG

- 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 Pavilion Trustees Ltd and Pavilion Property Trustees as joint Trustees of Eagle Unit Trust for an award of costs against Guildford Borough Council.
 - The appeal was against the refusal of planning permission for redevelopment to provide purpose built student accommodation including 360 bed spaces, support ancillary student services (such as study spaces, gymnasium, games rooms, lounge areas, student hub) car and cycle parking, access and landscaping arrangements..
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 047 of the Planning Practice Guidance states that examples of unreasonable behaviour that may give rise to a procedural award of costs includes, amongst other things, a lack of co-operation with other parties or delays in supplying information or other failure to adhere to deadlines.
4. The Applicant states that the Council unreasonably failed to disclose its legal advice and comply with the required appeal timetable and provide documents on time (including feedback on the legal agreement), which has led to unnecessary or wasted expense.
5. In relation to the disclosure of legal advice, the Council's reasons for refusing the proposed development, including their position on how Policy EC3 of the Local Plan should be applied is set out principally in their Officers report and subsequent statements of case.
6. Whilst the Applicant may disagree with it, the Council's reasoning is sufficiently clear to explain their position on the main issues and to allow them to be responded to.

7. The Applicant chose to disclose their legal advice, however the Council was not under a particular duty to reciprocate and not doing so in this case does not amount to a lack of co-operation on the Council's part or other unreasonable behaviour. This is the case regardless of whether the Council's legal advice was privileged or not.
8. Turning to compliance with the appeal timetable and provision of documents. Despite sending their initial statement of case in line with the appeal timetable, the Council neglected to also send the appendices and delayed in doing so for a number of weeks. The Council's reasoning for not acting sooner appears inadequate given the length of the delay. Whilst the appendices may have included material that the Applicant was aware of and was in the public domain, the Applicant and other parties to the appeal process were entitled to have sight of documents at the same time as per the published timetable for the appeal.
9. In relation to the legal agreement, the Council have evidenced that they raised their concerns about the in principal acceptability of aspects of the agreement at an early stage in the appeal process. The level of engagement given by the Council on the detail of the agreement following that is less clear from the evidence presented and the Council do not appear to dispute the time table of events that the Applicant sets out.
10. Whilst the Council was not under a duty to agree all aspects of the legal agreement, it was reasonable for the Applicants to expect timely engagement. On the balance of probabilities, such engagement was not adequately given in this case. This is also borne out by the Council's comments on the legal agreement dated 11 August submitted as part of their appeal representations. The comments include a number of matters of legal drafting that were in my opinion capable of being resolved had the proper engagement taken place.
11. Overall, the Council's actions in relation to complying with the required appeal timetable and providing documents on time (including feedback on the legal agreement) amounts to unreasonable behaviour.
12. The consequence of the unreasonable behaviour was that the failure to submit documents on time contributed to an extension to the timetable being necessary in order to allow them to be considered by other parties, with associated expense incurred by the Applicant due to a delay in the appeal process and the need to chase documents.
13. The lack of timely specialist engagement on the legal agreement has caused the Applicant wasted expense in drafting where earlier feedback on the detail could have assisted in resolving some aspects of it and therefore better focused the issues of disagreement at appeal that the Applicant needed to respond to.
14. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has been demonstrated.

Costs Order

15. 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 Pavilion Trustees Ltd and Pavilion Property Trustees as joint Trustees of Eagle Unit Trust the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred due to the failure to comply with the required appeal timetable and provide documents on time (including feedback on the legal agreement).
16. The Applicant is now invited to submit to the 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.

D.R. McCreery

INSPECTOR