



Costs Decisions

Site visit made on 27 July 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Costs applications in relation to Appeal Ref: APP/A3655/D/20/3252550 St Olives, Thornash Way, Horsell, Woking, Surrey GU21 4UN

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - **Application A** is by Mr Nathaniel Kaile for a full award of costs against Woking Borough Council.
 - **Application B** is by Woking Borough Council for a full award of costs against Mr Nathaniel Kaile.
 - The appeal was against the refusal of planning permission for a double storey side extension, a single storey rear extension and a single storey front porch.
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Decisions

Application A

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

Application B

2. The application for a full award of costs is allowed in the terms set out below.

Reasons

3. Planning Practice Guidance (PPG) advises that costs may 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.

Application A

4. In essence, the applicant's case is that the Council has not substantiated its reason for refusal in that it relied on inaccurate information, did not follow its own or national planning policies, was not consistent in its decision and did not engage with the applicant to avoid an appeal. On this basis, the Council has prevented development that should have been permitted and has led to the applicant incurring unnecessary costs in pursuing the matter through the appeal process.
5. PPG states that 'Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application'.¹

¹ Paragraph: 050 Reference ID: 16-050-20140306.

6. In my appeal decision, I have found that there is no evidence that the Council determined the appeal proposal in a way that was inconsistent with the other decisions referred to by the applicant, or not in accordance with the Council's relevant development plan policies or national planning policies. The Council did not therefore unreasonably prevent development that should have been granted planning permission.
7. However, I have found that the appeal site is not in the Rive Ditch catchment or PDA, as the Council had otherwise maintained to the applicant during its consideration of the appeal proposal. Whilst this matter does not affect my appeal decision, the Council has nonetheless referred to manifestly inaccurate information and made inaccurate assertions about the appeal proposal's impact in this regard.
8. This was misleading to the applicant and at least in part clouded the basis on which the Council was seeking the applicant's agreement to a pre-commencement of development SuDS condition. This persisted through the otherwise extensive, though increasingly protracted, correspondence prior to the Council's decision. Ultimately, the applicant did not agree to the condition and the Council refused planning permission, including in its reason for refusal that the proposed development is located in the Rive Ditch catchment and PDA.
9. I appreciate that there was no common ground between the main parties on the matter of whether the appeal site was within an area at risk of surface water flooding. Nevertheless, it is at least possible that clarity about the Rive Ditch catchment and PDA may have reasonably led to a different outcome including the applicant's agreement to the pre-commencement of development SuDS condition, in which case the Council maintains it would have granted planning permission.
10. For the reasons given, I find that unreasonable behaviour by the Council resulting in unnecessary expense in the appeal process, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Application B

11. The applicant does not state whether the application is for a full or partial award of costs. I note that it considers that the 'need for an Appeal could have been simply obviated' had the appellant agreed to the Council's standard pre-commencement of development SuDS condition. I have therefore considered this application on the basis that it is for a full award of costs.
12. In essence, the applicant's case is that the appellant did not have due regard to all relevant flood risk information, misapplied relevant planning policy and misunderstood previous decisions. As a result, this informed the appellant's decision not to agree to the Council's suggested condition which would have otherwise avoided the appeal.
13. PPG states that 'an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding' and that this may occur when 'the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should

have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence'.²

14. In light of my appeal decision, I am unable to reach a firm conclusion on whether the appellant misunderstood the Council's other previous decisions. With regard to flood risk information, it is evident that the appellant had regard to the EA surface water flood risk map and was entitled to make the conclusions that he did, which I appreciate the applicant did not agree with.
15. I am mindful that the Council erroneously referred to the Rive Ditch catchment and PDA but despite that it did, including with explicit reference to the Council's SFRA, there is no evidence before me in this appeal that the appellant sought to demonstrate to the Council that the appeal site or the proposed development was not in the Rive Ditch catchment or PDA prior to the Council's decision. However, while I appreciate that this may have revealed to the appellant that it was nonetheless in a different catchment and PDA, thus subject to similar considerations in respect of flood risk, this does not necessarily mean that the appellant did not have regard to the SFRA.
16. With regard to planning policy, the appellant's position was that the house, the appeal site or the proposed development was not within an area at risk of surface water flooding, be it at medium or high risk, and that this did not therefore support the need for a pre-commencement of development SuDS condition. I appreciate that the part of Policy CS9 which triggers the need for a SuDS (and in turn Policy CS16) is engaged depending on the 'significance' of the development. Nonetheless, elsewhere in Policy CS9 it is explicit that a flood risk assessment 'will be required' for (all) development 'adjacent' to areas at risk of surface water flooding. The appellant did not appear to entertain this aspect of the policy.
17. It was the omission of a flood risk assessment that led the Council to offer a pre-commencement of development SuDS condition (an otherwise reasonable and constructive approach in the circumstances) which in turn was the (only) determining factor in the outcome of the application. I therefore consider that the appellant did not have due regard to the Council's relevant development plan policies, in particular Policy CS9.
18. For the reasons given, I find that unreasonable behaviour by the appellant resulting in unnecessary expense in the appeal process, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

Application A

19. 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 Woking Borough Council shall pay to Mr Nathaniel Kaile, the costs of the appeal proceedings described in the heading of this decision.
20. 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

² Paragraph: 053 Reference ID: 16-053-20140306.

amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Application B

21. 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 Mr Nathaniel Kaile shall pay to Woking Borough Council, the costs of the appeal proceedings described in the heading of this decision.
22. The applicant is now invited to submit to Mr Nathaniel Kaile, to whose agent 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.

Robin Buchanan

INSPECTOR