
Costs Decision

Inquiry held on 27 to 30 April 2021

Site visit made on 30 April 2021

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Costs application in relation to:

Appeal C: APP/R3650/W/19/3242532

The Heights, 5 Hill Road, Haslemere GU27 2JP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Twist Heights Ltd for a partial award of costs against Waverley Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 22 dwellings following demolition of former school buildings and dwelling, provision of new vehicular access and associated works.
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Costs application in relation to:

Appeal D: APP/R3650/W/19/3242615

Land forming the frontage of the Haslemere Preparatory School, Hill Road, Haslemere GU27 2JP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Twist Heights Ltd for a partial award of costs against Waverley Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 4 dwellings, provision of new vehicular access and associated works.
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Decision

1. For the reasons that follow, both applications for an award of costs against Waverley Borough Council are refused.

The submissions for Twist Heights Ltd

2. The costs applications have been made based on procedural unreasonableness leading to unnecessary expenditure. The claim is based on behaviour associated with the planning applications related to Appeals A to D¹ as well as the pre-application negotiations. However, this application has only been made for an award of costs associated with Appeals C and D, to reflect the unnecessary expense while the Appeal A application was being negotiated with the Council.
3. The applicant's claim is that the Council did not engage reasonably and that this at the very least prevented the main issues being narrowed if not

¹ See appeal decisions Refs APP/R3650/W/21/3266933 (Appeal A); 19/3225899 (Appeal B); 19/3242532 (Appeal C); and, 19/3242615 (Appeal D)

altogether avoided. This includes the Council's behaviour during pre-application negotiations, particularly their failure to respond to revised information, and in their levels of engagement during the determination of planning applications, including the length of time taken for decisions to be taken.

4. The applicant claims that reasons for refusal relating to the lack of a planning obligation could have been avoided. The reason for refusal in relation to the school's potential designation as a non-designated heritage asset is claimed to be inconsistent with the officer's recommendations on Appeal A and emerging Policy DS05 of the Local Plan Part 2: Site Allocations and Development Management Policies Pre-Submission Document, November 2020. Additionally, it is claimed that the character and appearance reason for refusal could have been successfully negotiated and that the reasons for refusal have not been adequately substantiated.
5. The applicant also highlights that the officer recommended approval of the scheme which became Appeal A and that the refusal at committee was unreasonable. A further example of the alleged unreasonable behaviour is that the Council's decision on the Appeal A application introduces a reason for refusal relating to plots 22-25 that was not raised on the similar building in the refusal of the application relating to Appeal C.

The response by Waverley Borough Council

6. The Council's response is that there was no failure to engage or cooperate with the applicant. The Council declined some meetings with the applicant because the Council had nothing further to add above what it had raised previously. The refusals came about due to the applicant's unwillingness to grapple with the issues raised by the Council throughout the planning process. This was first clearly set out in the initial formal pre-application response, which included concerns with matters such as the preference for re-use of the existing building, density, set-backs, and the Hill Road boundary treatment. In the view of the Council, none of the appeals have successfully remedied these concerns.
7. In any event, the matters of response times and the provision of advice outside the formal pre-application advice service relate to customer service issues, rather than issues of genuine procedural unreasonableness.
8. All of the applications were refused based on clearly substantiated planning reasons of substance. This is not a procedural matter. On viability, the Council had a legitimate concern by reference to its affordable housing policies that affordable housing should be provided on the site in respect of the applications now the subject of Appeals B and C. In the light of further evidence provided by the appellant, the Council revised its position and dropped this reason for refusal. This was a pragmatic approach that helped to reduce the issues of contention at the Inquiry.

Reasons

9. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only 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.
10. The PPG also advises that the behaviour of parties during the time of the planning application can be taken into account in deciding whether

unreasonable behaviour has occurred, although the costs themselves can only be awarded in relation to unnecessary or wasted expense at the appeal.

11. The chronological order of events is important to understanding when and where any unnecessary expenditure may have occurred. I therefore set this out here:
 1. The submission of the application the subject of Appeal B;
 2. Refusal of the Appeal B application by the Council;
 3. Appeal B made;
 4. The submission of the applications now the subject of Appeals C and D;
 5. Refusals of the Appeals C and D applications by the Council;
 6. The submission of the application the subject of Appeal A;
 7. Appeals C and D made;
 8. Refusal of the Appeal A application by the Council; and,
 9. Appeal A made.
12. Steps 6 and 7 followed on closely from one another and Appeals C and D were lodged shortly following the submission of the application which became the subject of Appeal A. I therefore do not view this as unreasonable behaviour by the Council because a reasonable timeframe needs to be allowed for in the negotiation of a new application. Even if the Council was difficult to engage with during this pre-application process, the applicant had significant knowledge of the Council's position on development at the appeal sites from the pre-application response and the previous refusals.
13. Whether the eventual decision was made by the Council officers or elected members is not relevant to this application, because all of the reasons for refusal for all appeals were based on sound planning reasons. Character and appearance can be negotiated in some circumstances but in other circumstances there can simply be a difference of opinion that cannot be resolved.
14. The Council is not bound by the recommendations in one officer's report regarding the heritage value of the existing school building and was entitled to come to a different corporate position in determining the relevant application. The building is not so lacking in heritage value that this could be considered an unreasonable decision to take.
15. The building with plots 22-25 was proposed with a lower and less bulky roof for the application which became Appeal C, compared with the application which became Appeal A. It was therefore not unreasonable of the Council to introduce this as a reason for refusal for the application now the subject of Appeal A despite it not featuring on the reason for refusal for the application now the subject of Appeal C.
16. The Council sought to agree some of the reasons for refusal in the lead-up to the Inquiry, including the issue of viability, which is a positive stance to take and helped to minimise expense in the appeal process. I have not been

provided with any convincing evidence that this issue could or should have been resolved earlier in the application process.

Conclusion

17. Taking all of the above into account, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Consequently, no award of costs is justified.

O S Woodward

INSPECTOR