
Costs Decisions

Site visit made on 6 July 2021

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2021

Costs application in relation to Appeal Ref: APP/R0335/W/21/3266675 Land Adjacent to Silver Trees, Birch Lane, Ascot SL5 8RF

Application A

- 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 Bracknell Forest Borough Council for a full award of costs against Mr John Simmons.
 - The appeal was against the refusal of planning permission for the erection of two storey dwelling.
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Application B

- 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 John Simmons for a full award of costs against Bracknell Forest Borough Council.
 - The appeal was against the refusal of planning permission for the erection of two storey dwelling.
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Decision

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

Background

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Reasons

Application A

4. PPG provides examples of when an award of costs may be made. An appellant will be at risk of an award of costs if an appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.

5. Although this is not the first proposal for a single dwelling, there are differences between this and previous appeals at the site. The previous appeal scheme¹ for a dwelling required the removal of trees to create the access. This is not the case for the scheme before me. Furthermore, the footprint of the dwelling has changed as has the route of the access. Implications for trees across the site have therefore altered. In addition, the appeal before me proposes the dwelling as a self-build unit which needs to be weighed in the balance when reaching a decision.
6. An earlier appeal² also raised concerns with the loss of young vegetation. However, this was for agricultural buildings and green houses. The appeal relating solely to the felling and pruning of trees³ did not involve the introduction of a dwelling. These are different to a proposal for a dwelling and factors in favour of the scheme, such as the provision of housing, would not have applied.
7. I have dismissed the appeal as previous Inspectors have due to harm to the character and appearance of the area. Notwithstanding this, while conditions at the site may not have altered significantly, the scheme before me was not the same, or very similar to the previous appeals.
8. As a result, it follows that I cannot agree that the appellant has acted unreasonably in this case. As such, there can be no question that the Council was put to unnecessary or wasted expense.

Application B

9. PPG also provides examples of unreasonable behaviour by local planning authorities. These include the failure to produce evidence to substantiate reasons for refusal and making vague, generalised or inaccurate assertions unsupported by objective analysis as well as preventing or delaying development that should have been permitted.
10. The Council has referred to the location of the site being outside of settlement limits and being contrary to relevant policies in the officer report. Nonetheless, this was not included as a refusal reason and the report addressed a wide range of issues. Although elements of policies in the refusal reason relate to housing strategy, other parts, and the Council's case relate to the effect of the scheme on the character and appearance of the area. To my mind, this is separate, and they have not added a refusal reason relating to the local housing strategy in their statement of case. In any event, the appellant was aware of this matter from the officer report and addressed it in their statement of case prior to seeing the Council's.
11. The Council's officer report and statement of case identifies that the proposed dwelling would be a self-build plot and that this is a material consideration. The matter of the weight to give to any such considerations rests with the decision maker. The Council, as I have, did not consider that the provision of a self-build dwelling, along with other considerations, outweighed the harm from the scheme and the conflict with the development plan.

¹ APP/R0335/W/18/3215769

² APP/R0335/W/17/3168086

³ APP/TPO/R0335/6861

12. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such, there can be no question that the appellant was put to unnecessary or wasted expense.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated by either party applying for costs.

Stuart Willis

INSPECTOR