
Costs Decision

Site visit made on 29 June 2021

by David Cliff BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Costs application in relation to Appeal Ref: APP/Y3615/W/20/3264210 Land off Field Way, Send, Woking, GU23 6HJ

- 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 Damian Aziz (Concept Developments) for a full award of costs against Guildford Borough Council.
 - The appeal was against the refusal of planning permission for 'Residential development comprising 9 new dwellings'.
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Decision

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

Reasons

2. Planning Practice Guidance states that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs unreasonable expense in the appeal process.

Housing mix, street pattern, place making (reason for refusal 1)

3. With regard to housing mix, Policy H1(1) of the Guildford Borough Local Plan Strategy and Sites 2015 – 2034 ('the Local Plan') requires that new residential development delivers a wide choice of homes as set out in the latest Strategic Housing Market Assessment and should provide a mix of housing tenures, types and sizes appropriate to the site size, characteristics and location.
4. The Council has set out in its appeal statement (paragraphs 6.23 to 6.37) its justification noting the comparison of the appeal scheme proposals against the housing mix guidance in the Strategic Housing Market Assessment (SHMA). The Council recognises that the SHMA allows for flexibility in determining housing mix. However, the Council does not go on to make any meaningful assessment against the second part of Policy H1(1) in respect of the site size, characteristics and location, including the provision of any detailed evidence in respect of the appellant's case that the proposed housing mix takes account of the mix of two-storey detached and semi-detached family dwellings predominantly of three or more bedrooms in the area.
5. Had the Council taken into account the context and location of the appeal site as required by policy, it might have come to a different conclusion on this issue. This lack of consideration and supporting evidence to address the second

part of Policy H1(1) amounts to unreasonable behaviour by the Council. This has led to unnecessary expense by the appellant in contesting this objection.

6. The first reason for refusal also states that the proposal does not demonstrate an appropriate connection to the existing street pattern and fails to provide satisfactory place making. The Council's appeal statement clarifies that Policy D1(6) is relevant in this regard (not ID1(6)) as referred to in the decision notice) and seeks to explain this in terms of the reliance on Field Way for access and the lack of confirmation that the appellant has a right of access to utilise this. I am not aware of any policy requirement for a right of access to be proven and there is no evidence to indicate that it is not possible for such a matter to be separately negotiated. In this case a safe means of access has been proposed from the site onto Field Way and the Council has not made a case that Field Way is not an appropriate access road to the site in terms of highway safety, capacity or local amenity. It is not uncommon for new developments to rely on the use of a private access and there is no policy provision to prevent it. The Council also confirms in its statement that it has no objection to the creation of a cul-de-sac.
7. The Council's response to the costs application refers to matters of design, appearance and layout as being matters of legitimate planning judgement where well informed and well qualified persons can reason different conclusions. This may well be the case. However, in this case no evidence or explanation has been provided that the proposal is in any way deficient in terms of design, appearance and layout.
8. There is no reasonable justification that the proposal is in conflict with the development plan in respect of a connection to the existing street pattern or satisfactory place making.
9. I therefore find that the Council has not been able to demonstrate that it has a reasonable basis for its stance on these matters. Consequently, for the above reasons costs should be awarded against the Council due to its unreasonable behaviour in respect of the whole of the first reason for refusal which has resulted in the appellant incurring unnecessary expense in contesting these matters through the appeal.

Ecology (reason for refusal 2)

10. The Council's primary concern in this respect relates to site clearance works carried out prior to the submission of the planning application. The appellant's supporting ecological assessments submitted with the application was prepared following the clearance. The site clearance works would have been subject to normal wildlife protection regulations if and where relevant. There is no substantive evidence that significant adverse effects occurred in this regard.
11. Nevertheless, I can appreciate the concern that has arisen from the clearance works carried out prior to submission of the application. Whilst it is not clear that these works have been carried out to cause deliberate harm to biodiversity value, no reasons have been provided as to why the works were carried out at such an early stage. The Planning Practice Guidance ('PPG') also explains that it may also be relevant to consider works that have taken place in the recent past. The Council has explained and sought to justify its position in its appeal statement.

12. Whilst, having carefully considered the evidence, I have found there to be no significant conflict with development plan policies in this regard, on balance I do not consider that the Council has acted unreasonably with regard to this reason for refusal.

Infrastructure (reason for refusal 3)

13. The Council's concerns in this regard appear to have arisen from assertions rather than from any evidence regarding the need for facilities or pressure upon existing infrastructure. No evidence, for example, has been provided by the local education authority regarding existing school provision or the potential implications for such provision from the proposed development. The Planning Practice Guidance is clear that policies for planning obligations should be set out in plans and examined in public and that policy requirements should be clear so that they can be accurately accounted for in the price paid for land. Such policies should be informed by evidence of infrastructure and a proportionate assessment of viability.
14. Similarly, no detailed supporting evidence has been supplied to support and justify the Council's assertion on medical provision. Whilst there may be a strength of feeling on such matters, if these are to be put forward as a formal objection to a planning application, then supporting documented evidence is clearly required. This is particularly so when the Council wishes to deviate from the general approach set out in its Planning Contributions SPD which sets thresholds for relevant contributions. Furthermore, where cumulative impacts are an issue then it would be reasonable to expect that quantified evidence is supplied to support such a position. This leads me to find that the Council has not been able to show that it has a reasonable basis for its stance on this matter.
15. Given the lack of supporting evidence to justify the Council's objection in this regard, I consider that the Council has behaved unreasonably in relation to this reason for refusal. This has resulted in the appellant incurring unnecessary expense in contesting this part of the refusal.

Planning obligation (reason for refusal 4)

16. The Council's fourth reason for refusal refers to the lack of a planning obligation with the planning application to secure contributions towards a footpath and cycle track. As there was no such obligation before the Council when it determined the application and the appellant does not dispute the need for such contributions, I find that the Council has not behaved unreasonably in this respect.

Thames Basin Heath Special Protection Area (TBHSPA) (reason for refusal 5)

17. This reason for refusal relates to the failure of the proposal to prevent any adverse effects upon the integrity of the TBHSPA. There was no planning obligation to secure any mitigation before the Council when it determined the application. The applicant does not dispute the need for mitigation and has provided a planning obligation in this regard as part of its appeal submissions. In these circumstances, I do not consider the Council to have behaved unreasonably in this regard.

Conclusion

18. I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated with regard to the Council's first and third reasons for refusal and that a partial award of costs is therefore justified.

Costs Order

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 Guildford Borough Council shall pay to Damian Aziz (Concept Developments), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in connection with contesting reasons for refusal 1 and 3 on the Council's decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Guildford Borough Council, whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Cliff

INSPECTOR