The Planning Inspectorate

Costs Decision

Site visit made on 15 June 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2021

Costs application in relation to Appeal Ref: APP/A3655/W/20/3264984
Land on South side of Lock Lane, Pyrford, Woking GU22 8UX

- 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 Mrs T Lewis for an award of costs against Woking Borough Council.
- The appeal was against the refusal of planning permission for demolition of the existing stables and field shelter and the subsequent erection of a single residential bungalow together with the formation of a new access road to serve the site.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process.

4. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and refusing planning permission on a planning ground capable of being dealt with by conditions.

5. The applicant has expressed concerns regarding poor communication with the Council during the application process, including lack of response/feedback from the case officer and lack of response from internal consultees. In particular, the applicant considers that the Council acted unreasonably by registering the planning application, notwithstanding that it did not include biodiversity and tree surveys, and that the Council did not request them during the determination of the planning application, so that the applicant did not

have the opportunity to address these matters prior to the refusal of the application. The applicant also considers that the Council failed to provide an opportunity for the applicant to address outstanding issues in respect of the submitted Unilateral Undertaking. As such, the applicant seeks a partial award of costs in respect of the third, fourth and fifth reasons for refusal on the grounds that it was not given the opportunity to address these matters.

6. Whilst the Guidance states that costs cannot be claimed for the period during the determination of the planning application, it advises that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded, and that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

7. The Council, in its rebuttal has acknowledged that the third, fourth and fifth reasons for refusal could potentially have been addressed by the applicant if the appropriate survey information and correctly completed Unilateral Undertaking had been provided at application stage. However, as the Council considered the proposal to be unacceptable in principle within the Green Belt and due to harm to the character and appearance of the area, its view is that requesting these items would have led to additional expense for the applicant, whilst the application would still have been refused. I find this to be a reasonable approach. I also note that the Council advised the applicant by email that the application was unacceptable in principle and would be refused, and gave an opportunity for the withdrawal of the application, prior to the issue of the decision.

8. The applicant was professionally represented by a Town Planning and Property Adviser who submitted the planning application on the applicant's behalf. Also, the applicant did not seek pre-application advice, as advocated in the *National Planning Policy Framework 2021* (the Framework). Therefore, it appears to me that the applicant had reasonable opportunity to be made aware of the surveys and Unilateral Undertaking requirements prior to the submission of the planning application.

9. My decision, which accompanies this costs decision, explains why, in dismissing the appeal, I have found that the Council acted appropriately in refusing the application on the grounds of insufficient survey and mitigation information from the applicant to demonstrate that there would be no unduly harmful impact on protected species, biodiversity and trees of amenity value, and why these matters could not be dealt with by means of conditions, having regard to relevant development plan policies and Government guidance.

10. I also, consider that the Council acted reasonably by including the fifth reason for refusal, pending the completion of a legally acceptable Unilateral Undertaking, having regard to the requirements of the Habitats Regulations and relevant development plan policies and guidance within the Framework.

11. The applicant also asserts that the Council has failed to fully understand some elements of the scheme, and has not properly assessed it against Green Belt policies, including having regard to the location of the site within a manage area comprising previously developed land, the off-setting of existing structures with a single building, and the comparative increases in size between existing and proposed built development.

12. The Council's first and second reasons for refusal are complete, precise, specific and relevant to the application and clearly set out development plan policies against which the Council considers the proposal would be in conflict. The Council's delegated report explains why the Council consider the proposal would comprise inappropriate development within the Green Belt, and why it considers it would harm the openness of the Green Belt and the Council's comments on the appellant's appeal statement demonstrate that the Council has taken account of the location of the proposal within the manage area. My decision explains why I find no reason to disagree with the Council's conclusions in respect of the first two reasons for refusal, notwithstanding a difference of opinion between the main parties in respect of the sizes of the existing and proposed buildings, and why I consider that the development plan policies referred to in the reasons for refusal are relevant.

13. At a late stage in the costs process, the applicant introduced references to the Council's conduct when dealing with subsequent planning applications in respect of the appeal site and neighbouring land, and to a costs Decision involving tree related matters in respect of a housing proposal within a different Council area. I have only been provided with extracts of information in respect of each of these cases, which I do not find to be directly relevant to the applicant's application for costs associated with the current appeal. As such, I have not sought further comments from the Council in respect of these submissions.

14. Therefore, I do not consider that the Council failed to properly consider the application or evaluate the merits of the scheme against the relevant development plan policies. The Council was entitled to refuse the application and defend the appeal and has not acted unreasonably in doing so. Therefore, the appeal could not have been avoided.

15. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Leonard

INSPECTOR