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## Costs Decision

Site visit made on 24 January 2022

**by Robert Parker BSc (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 January 2022**

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### **Costs application in relation to Appeal Ref: APP/Y3615/W/21/3268856 Land at May and Juniper Cottages, Ash Green Road, Ash Green, Guildford GU12 6JH**

- 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 Bloor Homes Ltd for a full award of costs against Guildford Borough Council.
  - The appeal was against the failure to give notice within the prescribed period of a decision on an application for approval of details required by a condition of a planning permission relating to a development of 100 dwellings (including 40 affordable homes) with access to be determined, with associated garages, parking, open space, landscaping and play areas (layout, scale, appearance and landscape to form the reserved matters).
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### **Decision**

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

### **Reasons**

2. Parties in appeals normally meet their own expenses. The Planning Practice Guidance advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Council accepts that the information submitted with the application is sufficient to discharge condition no. 14 (iv). It does not give an explanation as to why the application was not determined within the prescribed period, but points out that it was engaged in negotiations with the appellant and the local community to explore whether an alternative route for the footway could be achieved without the loss of hedgerow on the northern side of Ash Green Road.
4. The search for an alternative route was driven by strong objections from local residents who were concerned regarding the environmental impacts of the scheme shown on Drawing No. 16072-03. However, that plan formed part of the outline planning permission and the submitted information is entirely consistent with it. The parameters have been set by the permission and consequently there is no basis in law for the Council to insist upon a different footway scheme, particularly in the absence of a planning permission for the adjacent Ash Manor site.
5. I recognise that the appellant needed certainty from a commercial perspective regarding the deliverability of the development. Discharging conditions is part of that process and in my opinion it was reasonable to expect that the application would be approved, if only as a fallback whilst discussions over an alternative footway route were continuing. I have noted the appellant's willingness to

cooperate in finding a solution which satisfies all parties; in my view, the appellant's behaviour has been nothing other than reasonable.

6. The Council was clearly in a difficult position following its failure to publicise the approved footway route via its online planning register. It would have been under pressure to address residents' concerns retrospectively. Nevertheless, there were no substantive reasons to justify delay in the determination of the application. In my view, the Council was guilty of deferring its decision in the hope that discussions would bear fruit. This constitutes unreasonable behaviour which has led to the appellant incurring the expense of an unnecessary appeal. I am therefore making a full award of costs.

### **Costs Order**

7. In the 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 Bloor Homes Ltd, the costs of appeal proceedings described in the heading of this decision. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Guildford Borough 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.

*Robert Parker*

INSPECTOR