



Costs Decision

Site visit made on 12 January 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Costs application in relation to Appeal Ref: APP/Q3630/W/21/3276188 307 Green Lane, Chertsey, KT16 9QR

- 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 Green Lane Chertsey (Developments) Ltd for a full award of costs against Runnymede Borough Council.
 - The appeal was against the refusal of planning permission for a development of 9 chalet bungalows to the rear of 299-311 Green Lane with access via 307 Green Lane.
-

Decision

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

Reasons

Introduction

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance advises that costs may 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.
3. The Council refers to *Wednesbury* "unreasonable" which is an action so unreasonable that no reasonable authority could have come to that decision. However, that is not the right test. In dealing with costs applications the word "unreasonable" is used in its ordinary meaning. Examples of behaviour that might lead to a substantive award against local planning authorities include not determining similar cases in a consistent manner and refusing permission on a ground capable of being dealt with by condition.
4. Some aspects of the application are similar to those considered by a previous Inspector in relation to appeal Ref: APP/Q3630/W/20/3259370. I shall have regard to his findings.

Flood maps

5. The applicant made an offer of an open-ended extension of time to determine the application in order to challenge the flood maps. It appears that no response was made to this at the time. Nevertheless, the National Planning Policy Framework observes that decisions on applications should be made as quickly as possible.
6. At the start of the application process, the Council could not have been certain whether its concerns about flooding would be overcome by further information. This might, for instance, have shown that the site was outside flood zones 2

and 3. However, there is no obligation on the Council to wait for an unspecified period for new evidence to be provided. The Framework also says that the right information is crucial to good decision-making. Therefore it was reasonable to expect that a review of this kind, which might have fundamentally affected the way the application was assessed, should have accompanied it from the outset.

Trees and site visit

7. The first reason for refusal alleges that the proposed development would result in unreasonable pressure on protected trees with consequences for townscape and landscape quality. However, similar objections were not raised in relation to applications RU.18/0175 or RU.18/0747. The subsequent appeals were dismissed for other reasons.
8. As acknowledged in the officer report, the proposal effectively replicates the combined layouts of those two earlier schemes. They are therefore comparable to the proposal. Furthermore, it is not evident which Local Plan policies adopted in 2020 could have led to different conclusions being reached to those arrived at previously. In any event, the actual relationship between the trees and the proposed houses would be the same and no material change in circumstances is cited.
9. The Council's concerns boiled down to the absence of a method statement given the proximity to some trees and discrepancies about their positioning and status. However, as noted by the previous Inspector at paragraph 23 of his appeal decision, the Council accepted in relation to RU.18/0175 that the trees could be protected during construction works by the imposition of a condition. It is not evident why a different approach was taken in this case or why the position was not clarified before determination.
10. Given the intention to return to an issue that the applicant understandably believed was behind him, it was incumbent on the Council to ensure that its position could be justified. To that end, it is a surprise that neither the relevant case officer nor tree officer visited the site, especially as they had not dealt with the previous schemes. This would have provided confidence to the applicant that officers had a full appreciation of this issue and might have led to dialogue that would have resolved the matter. Whilst information was passed on by the previous case officer this is no substitute for a first-hand assessment.
11. The application was submitted in September 2020 when restrictions linked to the pandemic were in force. However, there is no evidence that site inspections were universally precluded by the Council at that time and according to the applicant these were being undertaken by other local authorities. The Planning Inspectorate resumed face-to-face site visits in May 2020, subject to suitable safeguards being taken. Therefore this does not provide sufficient justification for not visiting the site before a decision on the application was reached.
12. All in all, compounded by the failure of those making recommendations to inspect the trees, the Council was unreasonable to impose the first reason for refusal. This was not consistent with its previous stance and the outstanding matters could have been addressed by condition. Therefore the applicant has been unnecessarily compelled to contest this point. However, the Council

indicated that it no longer wished to pursue this objection on 9 December 2021 so any unnecessary expense was only incurred prior to then.

Sequential test and five year housing land supply

13. The appeal decision for this development explains that the need for the sequential test is not obviated by the absence of a five year housing land supply. Whilst the Council has previously taken that position this does not render its objection on flooding grounds unreasonable. Indeed, the undertaking of a sequential test is a requirement of national policy for sites within flood zones 2 or 3.
14. The applicant has provided evidence that in one other case the Council did not base the area for search on the entire Borough and other developments in flood zone 2 were approved without a sequential test. The failure to apply the same rigour to those applications as to this one is a matter that appears to disadvantage the applicant. No explanation has been provided as to why this is so. However, the appeal decision confirms that the expectations of the Council for the assessment of this case are in line with national policy. They are therefore reasonable and not rendered otherwise by the different approach taken elsewhere. This is nevertheless something that should be avoided.
15. As part of his case the applicant has provided copious detail to show that the Council cannot demonstrate a five year housing land supply. The Council disagrees and has provided an update of the position as of 31 March 2021. This matter is not central to the outcome of the appeal as explained in the decision. It has not been necessary to resolve this question so it cannot be said that it was unreasonable for the Council to take the view that it has.

Conclusion

16. I find that unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the reason for refusal regarding protected trees and that a partial award of costs is therefore warranted. The amount of any award is not for me to determine. Details of how this should be settled in the event of a dispute are set out below.

Costs Order

17. 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 Runnymede Borough Council shall pay to Green Lane Chertsey (Developments) Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred until 9 December 2021 in relation to contesting the first reason for refusal of application Ref RU.20/1397 concerned with protected trees; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to the 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.

David Smith

INSPECTOR