



Appeal Decision

Hearing held on 13 September 2022

Site visit made on 13 September 2022

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2022

Costs application in relation to Appeal Ref: APP/Y3615/W/22/3300200 Urn Field, Downside Road, Guilford GU4 8PH

- 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 Dylan Kerai for a full award of costs against Guildford Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for Full planning application for the creation of a floodlit artificial hockey pitch with a 6-lane all weather running track, a football pitch, relocation of cricket nets, extension to sports pavilion balcony and new javelin, discus, shot put and long jump area alongside the creation of a new store building and additional on-site car parking.
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Decision

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

The submissions

2. The appellant's case was made in writing. The Council's response was made orally at the hearing, and the appellant made some further points orally as well. Details of the oral submissions are set out in the Annexe at the end of this decision.

Reasons

3. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The substantive points in the appellants case include that the Council has failed to produce evidence to substantiate the reason for refusal at appeal, has made vague generalised or inaccurate assertions about a proposals impact which are unsupported by an objective analysis and that it has prevented or delayed development which should clearly be permitted.
5. The reason for refusal is, by its nature, brief, and refers only to the harm. However, the Officer's report clearly refers to the benefits of the proposed development, therefore I am satisfied that these were before Members when they made their decision. Furthermore, this forms part of the Council's evidence for the appeal and therefore I am satisfied that the benefits have

- been fully explored. The Officer's report also provides a full explanation as to the effects on the AONB and reasons for a conclusion of harm in this regard.
6. The Council has provided a detailed appeal statement. This was not produced by a landscape specialist nor a lighting consultant. Nevertheless, it provides a sufficiently thorough analysis as to the Council's view on the harm that would occur and suitably substantiates the reason for refusal at appeal.
 7. The Officer's report and evidence is clear that this was a decision made on balance and I am satisfied that it has considered the development plan as a whole. It acknowledges where the Framework requires particular weight to be afforded to certain issues and clearly reports the views of consultees including the Council's Landscape consultant, AONB Officer and members of the public. These views are not consistent.
 8. Whilst Committee members came to an opposing conclusion to the Officer's report, it is not unreasonable to come to a different planning judgement in these circumstances. Taking into account the balanced decision required, the proposal is not development which should clearly be permitted.
 9. Consequently, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated.
 10. For this reason, neither a full nor partial award of costs is justified.

H Miles

INSPECTOR

Documents

Costs Application on behalf of Tormead Limited

Annexe: Submissions Made Orally at the Hearing

Council

The key issue was the harm to the AONB, to which the NPPF says great weight should be attached. The impact on landscape and scenic value is a subjective not technical exercise. There is agreement on all sides that there is harm to the AONB, and this is acknowledged in the Officer's report, by the AONB Officer and by the Council's landscape consultant.

The issue therefore is what this harm is to be balanced against. Members are entitled to come to a different opinion in terms of balance.

The appellant's evidence seeks to diminish the harm in terms of the number of people who use these areas and suggests that harm due to light is diminished due to urban glow. Visuals do not show urban glow effects but pinpricks of light. The council's evidence, including photographs, disagrees with the impact light will have especially from Merrow Down and the west boundary. The Inspector is invited to make an assessment of what is visible, by who and the degree of harm.

The light will be for a limited number of hours and 8pm is less harmful, but even this will impact on a large number of users over a large area.

It is not unreasonable to come to own assessment and there is nothing unreasonable in how the evidence has been presented.

The Council is not ignoring advice from AONB advisors. These people manage the AONB and advise on applications. Also the Council is supported by members of the public and other users of the AONB.

This is balanced against the wishes of the schools and the benefit to young people. However, there is no evidence that either school is failing to provide adequate PE or a good level of provision. Until today there was no evidence that current facilities cannot continue or other options are not available. This is the convenience and cost of providing better facilities, these gains should be balanced against the harm. The schools have the use of the existing facilities and they could be upgraded without the pitch or lights.

There is potential other gain to landscaping although this is largely as mitigation.

Hence the decision is one of balance - harm to the AONB against gains in facilities for the school. The balance tips firmly in the direction of refusal. There are sufficient details to come to that conclusion.

Appellant

Approach to Landscape and Visual Appraisal (LVA): Appellant has, in agreement with the Council, put together verified photomontages and an LVA. These show clearly what the impact would be. Rather than engage with that evidence, the Council has relied upon generalised statements and unverified images. Read the AONB officers response – no engagement.

No engagement with potential landscaping.

The Council's case is reliant upon views within the site and from the gate. But the school could erect an opaque gate. People on the site would visit for sporting use so the proposed development would be expected and welcome.

Need: The appellant has demonstrated need and benefits which don't appear in the Council's reason for refusal. This is not disputed in the discussion of main issues.

Costs to Guildford County – cost is prohibitive for a state funded school

This can't be about convenience. Bussing children 30mins each way is hugely inconvenient and inadequate. 2 pitch provision off site has now become just 1.

The existing facilities could be upgraded without lights. But the appeal scheme is focussed on the need for these facilities by Tormead, Guildford County and the community.

There is no evidence either school fails to provide adequate PE. The School Sport Activity Plan makes clear the importance of high quality modern lessons for different backgrounds and abilities and the importance of formal sport. The development would provide high quality clubs and activities. Girls who want to play hockey can't just play football. It would provide a range to harness the talents and ability of children. The hockey club can't just play football.

Sport England Guidance is also clear that there should be well designed, planned positively sport. 1 or 2 options is not adequate. The focus is on the range of sports and physical activities. Policies in response to this are not included in the Council's case and reason for refusal.