



Costs Decision

Site visit made on 27 September 2022

by L Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2022

Costs application in relation to Appeal Ref: APP/H1705/W/22/3300098 Land adjoining Clift Surgery, Minchens Lane, Bramley, Tadley, Hampshire RG26 5BH

- 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 Robert Newman of Charles Elliott Properties Limited for a full award of costs against Basingstoke and Deane Borough Council.
 - The appeal was against the refusal to grant technical details consent for the erection of 6 no residential units with associated access, parking and landscaping pursuant to permission in principle approval Reference 19/01470/PIP for 4-6 no. residential units.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 049 of the PPG sets out some examples of unreasonable behaviour by local planning authorities.

First Reason for Refusal – Highways

3. Whilst Council Members are not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the Highway Authority concluded that the proposed access would be acceptable. No convincing technical evidence has been provided to demonstrate that the position of the proposed access would have an unacceptable impact on highway safety or that additional vehicular movements associated with the proposal would exacerbate any highway safety issues.
4. A vehicular access from Minchens Lane was approved via an earlier appeal¹, which was to serve the existing use of the appeal site as an agricultural field, rather than to serve the appeal proposal of 6 dwellings. However, as I have concluded in my main decision, whilst this access was to serve a different use, it was still a vehicular field access, which was expected to have vehicular and

¹ APP/H1705/W/20/3252433

pedestrian traffic entering and exiting the site. Furthermore, the visibility splays required for the approved field access are the same visibility splays that are required for the proposed residential access.

5. The decision of the Council to object to the proposed access contrary to the advice of the Highway Authority, without adequate technical justification, and which an Inspector had previously indicated to be acceptable, was unreasonable behaviour. In these circumstances, unnecessary extra costs were incurred by the appellant and an award against the Council in respect to the first reason for refusal is justified.
6. The applicant also raises matters in relation to the consideration of highways under the permission in principle. However, this is not the application before me and is therefore not relevant to my determination on costs.

Second Reason for Refusal – Character and Appearance

7. Whilst the matters of density, landscape and visual amenity might have been discussed at the permission in principle stage, ultimately the scope of a permission in principle is limited to location, land use and amount of development. Therefore, it was reasonable for the Council to consider these matters under the technical details consent and their decision on these matters is an exercise of judgement. Whilst I have ultimately found in favour of the applicant on this matter, the Council in this case was entitled not to accept the professional advice of its officers so long as a case could be made for the contrary view. The Council's decision in regards to the second refusal reason was not unreasonable.

Third Reason for Refusal – Biodiversity

8. I do not consider that the Council acted unreasonably in raising the loss of biodiversity on the site as an issue. Whilst I note members were aware of the draft agreement in place, this was not executed at the time the Council made its decision.

Conclusion

9. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to the second and third reasons for refusal. However, a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's first reason for refusal, is justified.

Costs Order

10. 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 Basingstoke and Deane Borough Council shall pay to Mr Robert Newman of Charles Elliott Properties Limited the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's first reason for refusal relating to highway safety.
11. 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. In the event that the parties cannot agree on the

amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Laura Cuthbert

INSPECTOR