



Costs Decision

Site visit made on 19 October 2022

by **H Miles BA(hons), MA, MRTPI**

bbc appointed by the Secretary of State

Decision date: **18 November 2022**

Costs application in relation to Appeal Ref: APP/D3640/W/21/3289842
Plot being land to the ~~north-east~~northeast of Hatton Hill, Squirrels Nest Road, Windlesham GU20 6AD

- 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 Joseph & Oliver de Rozarieux & Comberti for a full award of costs against Surrey Heath Borough Council.
 - The appeal was against the refusal of planning permission for a single detached dwellinghouse (Use Class C3a).
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Decision

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

Reasons

2. 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.
3. The substantive points in the appellants cost application include that the Council has prevented or delayed development which should clearly have been permitted with regard to the site's location in a village. That planning permission was refused on arboricultural grounds which were capable of being dealt with via condition. That similar cases have not been determined in a consistent manner with regard to the ecological reason for refusal. As well as that there was a lack of contact during the application process, and as such the Council have refused to provide reasonably requested information.
4. It can be seen in my main decision that I agree with the Council's position that the appeal site is not in a village. I appreciate the appellant's evidence provides an extensive analysis of the contrary position. Nevertheless, the Council have provided a sufficiently thorough supporting analysis for their decision and as such have not acted contrary to case law. Therefore, it is evident that I do not find that the appeal scheme is development which should clearly have been permitted in this regard.
5. My main report sets out that the loss of trees which are important to the character and appearance of the area is likely, and a condition has not been put to me which would overcome the harm identified. As such, this reason for refusal is not unreasonable.

6. With regard to ecology, the previous application¹ was for a different development of four dwellings, and that there has been a change in circumstances in that the ecological report is now over 2 years old and an objection has also been received from Surrey Wildlife Trust. Consequently, I do not find the circumstances in this regard to be so similar that these two applications should have been determined in the same way. As per my appeal decision, in these circumstances these details must be established before planning permission is granted and therefore would not be capable of being dealt with by condition.
7. The Council acknowledge the lack of 5 year housing land supply at the time of the decision on the application. Whilst it does not explicitly refer to footnote 7 of paragraph 11d of the Framework which states that where the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, (in this case, Green Belt), paragraph 11d is not engaged. The Council have not acted unreasonably in this regard.
8. All these matters have been suitably supported by suitable evidence, which is not vague, generalised or inaccurate.
9. There has been limited contact between the main parties during the application process with particular regard to a discussion about ~~self-build~~~~self-build~~ and custom plots or the planning obligation. The Council's costs response references a paragraph from the 2012 National Planning Policy Framework, nevertheless, the Council refers to the requirement to work proactively with applicants. The planning obligation includes mechanisms to contribute towards mitigation of the effects of the proposed development on the Thames Basin Heath Special Protection Area (TBHSPA), towards traffic measures in Windlesham, to secure the dwelling as ~~self-build~~~~self-build~~ housing, and assure fundamental design principles.
10. The Council provides an objective analysis of very special circumstances associated with the proposed development. This includes the benefits and requirements associated with ~~self-build~~~~self-build~~ housing on this plot. Although there was no discussion between the parties about this matter, I have no reason to believe that this would have avoided the need for this appeal or narrowed the issues to be considered. The Council also acknowledge that a strategic access management and monitoring payment would mitigate harm to the TBHSPA.
11. However, there is no consideration as to whether the village traffic contribution or the fundamental design principles contribute to the very special circumstances in this case. This is an oversight on the Council's behalf. However, it can be seen in my main report that the village traffic contribution should be afforded no weight and that the benefits of the fundamental design principles, even when considered with the other matters do not amount to the very special circumstances required to justify this development. A discussion about the obligation would not alter the position in relation to these matters. As such the Council would have come to the same conclusion on the application even if they had specifically referenced these points and this appeal would have nonetheless been necessary. Consequently, there is no wasted time or expense in the appeal process as a result of these actions.

¹ LPA ref 19/2218

12. This costs decision relates to the current appeal only and not to previous applications or pre application requests. I also understand that the application fee requested by the Council had been paid.
13. Consequently, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated.
14. For this reason, neither a full nor partial award of costs is justified.

H Miles

INSPECTOR