



Costs Decision

Site visit made on 21 September 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Costs application in relation to Appeal Ref: APP/L3625/W/21/3288783 Subud Hall, Allingham Road, Reigate RH2 8HX

- 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 Subud Britain for a full award of costs against Reigate & Banstead Borough Council.
 - The appeal was against the refusal of planning permission for a development described as Use of site for three residential dwellings.
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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 16-030-20140306 of the Planning Practice Guidance (the PPG) advises that, costs may only 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. Paragraph 16-049-20140306 of the PPG states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate reasons for refusal on appeal and vague, generalised, or inaccurate assertions about a proposal which are unsupported by any objective analysis.
3. The costs application sets out the grounds upon which the appellant considers the Council acted unreasonably. The appellant is of the view that the Council's committee chose to make a decision against the officer's recommendation based upon an unreasonable consideration of the evidence presented, contrary to its planning policies and technical guidance.
4. The appellant has complied with the technical requirements of Annex 3 of the Reigate and Banstead Development Management Plan (2019) (the DMP) and marketed the property for double the minimum length of time required. The appellant has provided other substantive evidence in respect of other facilities, to demonstrate the requirements of Policy INF2 and Policy CS12 of the Reigate and Banstead Core Strategy (2014) (the CS) have been met. It is clear from the committee report and the advice from an officer of the planning policy team, that officers were satisfied the requirements of the annex had been met.
5. Annex 3 states that longer periods of marketing may be required for sites of importance to the local community. The Council has not provided substantive evidence that demonstrates the facility is one that can be considered of

particular importance to the local community. I have considered the Council's views upon the effect of the pandemic. However, the appellant marketed the property for approximately 12 months, which Council officers considered was sufficient in the circumstances.

6. The Council chose to refuse the application at committee rather than defer its consideration pending further consideration in relation to its concerns. While the Council is 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.
7. The Council has not provided substantive evidence to justify its view that the marketing period was insufficient to determine whether the policy tests have been met. It does not demonstrate its case that over parts of the marketing period access to finance was so restrictive that further marketing was required, beyond a period that is double the minimum requirement of its policy. It has not provided evidence such as a suitable analysis of market conditions over the full 12 months or an explanation of the effects of Covid-19 restrictions it has referred to over this time. It also does not make clear exactly how much further marketing it expected.
8. Financial markets are subject to fluctuations for varying reasons over the course of time. Based upon the evidence before me viewings were taking place at the property and there is no substantive evidence that would lead me to conclude the financial market was not functioning sufficiently such that 12 months of marketing was sufficient for a realistic view to be taken.
9. The Council has had the opportunity to fully reason and justify its decision through the appeal process, and it has not. For the reasons outlined, I find that the Council has not produced evidence to substantiate a reason for refusal on appeal and it has made some generalised assertions which are unsupported by objective analysis. This is unreasonable behaviour and appellant has been faced with unnecessary expense in the appeal process.
10. I specifically raised the issue of heritage assets during the determination of the appeal. This should have been considered and views reached on this material consideration during the determination of the application. As it is a matter that needed to be addressed, while it did take place during the appeal process, addressing this particular issue did not result in unnecessary or wasted expense.

Costs Order

11. 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 Reigate & Banstead Borough Council shall pay to Subud Britain, the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred as a result of contesting the Council's reason for refusal set out in its decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. 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.

Dan Szymanski

INSPECTOR