



Costs Decisions

Site visit made on 18 May 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Costs applications in relation to Appeal C Ref: APP/R3650/W/22/3304855 & Appeal D Ref: APP/R3650/W/22/3305381

2 The Reeds, Tilford, FARNHAM, Surrey, GU10 2DJ

- The applications are 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 applications are made by Mr Peter McKeown and Mrs Stephanie Houston for a full award of costs against Waverley Borough Council.
- The appeals were against the refusal of planning permission for – Appeal C alterations to the existing access/driveway/track and Appeal D erection of an ancillary building.

Decisions

1. The applications for an award of costs for both appeals are allowed in the terms set out below.

Preliminary Matters

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.

Appeal C the Case for the Parties

3. The appellant argues that the Council were wrong to refuse permission. The Officer's recommended permission be granted but in so doing failed to analyse the appellant's permitted development rights. This meant that members did not realise that much of the development was permitted development in the first place. Officers further compounded the misunderstanding by stating a fence between the wood and the garden would need planning permission to be erected – this also was untrue as that would be permitted development.
4. Once the case was before Members they were swayed by false allegations made concerning the loss of trees which had been comprehensively debunked by the Forestry Commission, Surrey Wildlife Trust, the Council's Tree and Landscape Officer and others. Members clearly failed to understand the issues and erroneously thought that this was a green belt case where very special circumstances were required. This all resulted in unreasonable behaviour.
5. The Council have not sought to provide a response to these allegations.

Reasons

6. The key issue in this case is that the track had always existed. Officers were confident this was the case, evidence from an arboriculturalist and Surrey Wildlife trust showed there had been no loss of trees and no widening of the

existing track and photographs and maps also showed the track to be historic. There was no evidence to the contrary other than hearsay and so it was perverse not to proceed on the assumption the track was already there. Given that, the omission of any analysis of permitted development rights was a serious error as it meant the Members were misled as to their options.

7. I cannot comment on exactly what went on at the Council meeting as I was not there and of course Members are within their rights to disagree with Officers but it does seem that some Members were confused by the green belt issue and thought that very special circumstances were required, which was not the case, that there had been a loss of trees, which was not the case and that the track was new, which was also not the case. If they are going to overturn the Officers recommendation then there must be reasonable grounds for doing so, but in this case there were not. The first reason for refusal that there would be harm to the AONB was clearly untenable given the advice from various professionals they had received, that the track already existed, and no harm has been identified. The second reason for refusal could be overcome by conditions.
8. It seems clear to me the Council did act unreasonably in refusing the application and the appellants were put to the unnecessary expense of an appeal.

Appeal D the Case for the Parties

9. The appellant argues that although Officers recommended approval they failed to understand the correct situation regarding permitted development and so failed to understand there was a legitimate fallback position to relocate the shed. As a consequence only one very special circumstance was described to Members. It was also clear that Members failed to grasp that removing the two existing sheds would be beneficial for the green belt in terms of openness. The appellant also gives numerous examples of prejudicial or plainly incorrect assumptions and comments made at the planning meeting by Members.
10. In response the Council argue they were not wrong about the permitted development rights position as they were referring to building the shed in the same position – they explained at the meeting the shed could be built to the north of the house. The Members were fully aware of the very special circumstances but reached their own judgement on what weight they should be given.

Reasons

11. It seems from the evidence available that members were, to put it charitably, not fully up to speed as to what was going on with this application for a garden shed. There clearly was a legitimate fallback position and this should have been in the written report. The argument made above that Officers were only dealing with the shed in its present position is simply not true. The Officers report refers to the appellants' argument the shed could be relocated and concludes no permitted development rights exist due to the reconfiguration of the dwelling – although what this reconfiguration is, is not explained.
12. Officers did correct this position verbally at the meeting but by then it seems it was too late and members had made up their minds. This was only a garden shed, its only potential to undermine green belt policy was due to a loss of

openness. This loss of openness was clearly remedied by the removal of the existing dilapidated sheds. Given that there seemed to be no other valid arguments raised, then it was obviously unreasonable to refuse an application that would improve openness on the grounds it would harm openness.

13. It seems clear to me the Council did act unreasonably in refusing the application and the appellants were put to the unnecessary expense of an appeal.

Costs Order

14. 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 Waverley Borough Council shall pay to Mr Peter McKeown and Mrs Stephanie Houston, the costs of both the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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.

Simon Hand

INSPECTOR