



Costs Decision

Site visit made on 20 April 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 JUNE 2023

Costs application in relation to Appeal Ref: APP/B5480/W/22/3307017 Land to the south of Copthorne Gardens RM11 3DL

- 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 Christopher Burton for a partial award of costs against the Council of the London Borough of Havering.
- The appeal was against the refusal of permission in principle for "5 to 9 self build plots".

Decision

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

Reasons

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.
3. Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal and with respect to the substance of the matter under appeal. Examples of unreasonable behaviour may include failure to produce evidence to substantiate each reason for refusal on appeal, delay in providing information or other failure to adhere to deadlines, or only supplying relevant information at appeal when it was previously requested, but not provided, at application stage.
4. The applicant for costs contends that interested party and statutory consultee comments on the application were not provided by the Council when requested. Furthermore, when they were eventually presented, they were heavily redacted, and unredacted versions were only made available through the appeal process. The applicant also has significant concern with the third reason for refusal, which they contend is confused and vague, substantively motivated by interested party comments and could have been dealt with at the technical details consent stage.
5. The applicant raised concerns that the case officer considering the application had not visited the site. However, the Council has confirmed the case officer did visit the site in March 2022, which the applicant has accepted.
6. It will be seen from my decision that I agree with the Council's judgement in respect of the first and second reasons for refusal. Turning to the third reason for refusal, only issues relevant to the 'in principle' matters of land use, location and amount of development should be assessed at this stage. The permission in principle process does not require the decision-maker to be

satisfied about all aspects of the development and there is no planning permission until a subsequent technical details consent has been granted.

7. Ecology and biodiversity are issues affected by land use, location and the amount of development. The land to which the appeal relates is a natural environment and so it is not unreasonable for the Council to have regard to these matters in making their decision, regardless of any planning policy or other designations. Local planning authorities must also have regard to representations received on an application, however there is no substantive evidence to indicate that the Council was unduly influenced by these.
8. The Council maintain their position on these matters was based on the effect of the proposal on the natural restoration of the land following an earlier removal of a tree(s) and loss of habitat on site. Furthermore, they contend that, when they visited the site, there were sufficient seeds, roots and soil remaining at that time to enable the ecosystem to be naturally restored, subject to respite and exclusion of any further activity for a period of time. While no detailed ecological information has been provided, copies of Tree Preservation Orders were supplied that provide some evidence of the site's biodiversity.
9. My decision diverges from the Council's in that, on the basis of the evidence before me, I have no reason to conclude that a scheme could not be devised that would protect or enhance the ecological or biodiversity value of the site. However, I do not consider the Council acted unreasonably in applying different weight to the evidence before them and arriving at a different conclusion.
10. With respect to the provision of interested party and statutory consultee comments to the applicant during or after the application process, in the first instance it should be noted that only the unnecessary or wasted costs incurred in pursuit of the appeal itself can be recovered by an award of costs. Any undue delay or lack of communication in the planning process is regrettable. However, I recognise that the Council has a duty to ensure personal data is handled appropriately and not to publish or reproduce inappropriate comments. In the context of the truncated statutory timescales involved in the determination of a permission in principle application and the number of representations received, this could prevent or delay the Council from publishing or reproducing representations from interested parties.
11. Ultimately, a summary of representations received at the time the decision was made was provided in the Officer Report and copies of these were submitted at appeal stage and provided to the applicant as required. The applicant has had an opportunity to address these through the appeal process. Even if I were to agree the Council acted unreasonably in failing to provide representations when requested by the appellant, it is not clear how receipt of these representations at appeal stage, rather than earlier, has resulted in unnecessary or wasted expense for the applicant in the appeal process.

Conclusion

12. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Ryan Cowley

INSPECTOR