



Costs Decision

Site visit made on 10 August 2023

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2023

Costs application in relation to Appeal Ref: APP/C3620/W/22/3300093 Land south of Lower Road, Great Bookham, Leatherhead, Surrey KT23 4EL

- 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 Berkeley Homes (Southern) Limited for a full award of costs against Mole Valley District Council.
 - The appeal was against the refusal of planning permission for change of use from Use Class F1 (education) to F2 (outdoor recreation) for the provision of public open space including areas of planting, a feature pond, community orchard and outdoor recreation.
-

Decision

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

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. The first reason for refusal related to Green Belt. The Council's approach to this issue treated the proposal as creating a "*place*" which amounted to a "*facility*" for outdoor recreation under paragraph 149(b) of the National Planning Policy Framework (the Framework). As noted in my appeal decision, paragraph 149 is concerned with new buildings. No new buildings are proposed so paragraph 149 is not relevant. The Council misdirected itself by approaching its decision in this way.
4. Although the Council went on to refer to paragraph 150, which is the relevant paragraph, reading the officers report a whole it seems to me that the mistaken approach to paragraph 149 was an important element of its analysis. This error was compounded by a reliance on the changed appearance of the site, which was characterised as "*a man-made layout and appearance.*" Visual considerations can be relevant to an assessment of openness. Nevertheless, the Council did not show how, in this case, the introduction of wildflower areas, planting and the other features referred to in the application would be harmful to openness. Moreover, there was no evidence to support the assertion that the proposed use would generate an increase in footfall that could reasonably be said to impact on the assessment of openness.
5. Overall, I consider that the Council's approach to Green Belt policy was lacking in credible evidence or argument. The Council failed to substantiate the first reason for refusal.

6. The second reason for refusal related to loss of playing fields. The Council's case was reliant on the objection of Sport England to the planning application. However, Sport England did not make representations on the appeal. PPG states that:

"Statutory consultees play an important role in the planning system: local authorities often give significant weight to the technical advice of the key statutory consultees. Where a local planning authority has relied on the advice of the statutory consultee in refusing an application, there is a clear expectation that the consultee in question will substantiate its advice at any appeal."

and

*"Where a local planning authority has placed significant weight on the view of the statutory consultee in its reasons for refusal, the local planning authority may wish to request the statutory consultee attends the inquiry or hearing, or makes written representations, to defend its position as an interested party."*¹

7. In this case, the Council did place significant weight on the views of Sport England. However, the appellant's statement of case provided cogent evidence that the replacement playing fields to be provided as part of the new school would meet the policy requirements set out in the development plan and the Framework. The Council's statement of case simply failed to engage with this evidence. Instead, it referred back to objections made by Sport England at the application stage. Acting reasonably, the Council should have obtained further evidence from Sport England to substantiate the reason for refusal, as advised by the PPG. If such evidence was not going to be forthcoming, for whatever reason, the Council should have either produced its own evidence or reviewed its position in relation to the second reason for refusal. As none of these things happened, the Council failed to substantiate the second reason for refusal.
8. The submission of the UU, albeit at final comments stage, provided a further opportunity for the Council to review its position on the second reason for refusal. That opportunity does not appear to have been taken.
9. In view of my conclusions in relation to the substance of the case, it is not necessary for me to comment on the appellant's allegation that there was a lack of co-operation during the determination of the application.
10. In conclusion, the Council failed to provide evidence to substantiate each reason for refusal. This prevented or delayed development which should clearly have been permitted, having regard to the development plan, the Framework and all the circumstances of this case. This amounted to unreasonable behaviour, which caused the appellant to incur unnecessary expense in the appeal process. A full award of costs is therefore justified.

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 Mole Valley District Council shall pay to Berkeley Homes (Southern) Limited, the

¹ Planning Practice Guidance - Reference ID: 16-055-20140306

costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Mole Valley District 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.

David Prentis

Inspector