



Costs Decision

Site visit made on 21 September 2023

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2023

Costs application in relation to Appeal Ref: APP/A3655/D/23/3327559 17 Rainbow Court, Woking GU21 3RD

- 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 Woking Borough Council for a full award of costs against Mr and Mrs Cutt.
 - The appeal was against the refusal of planning permission for a private driveway with new access & drop kerb onto Littlewick Road, including parking & turning head, across county council highways land.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. Woking Borough Council is seeking a full award of costs on the basis of substantive matters. They assert that the appellant's behaviour was unreasonable as the appeal had no reasonable prospect of succeeding having particular regard to the pre-application advice from the Highway Authority and the feedback received during the planning application process.
4. From the correspondence, the Highway Authority's pre-application response (dated 31 July 2020) raised concerns in relation to the design options provided but also set out advice and technical requirements for any access arrangements. The pre-application document before me does not include any plans, nonetheless, it is clear that the design and details submitted with the planning application were different to that at the pre-application stage and sought to address some, if not all, of the aspects raised by the Highway Authority.
5. In my view, this does not indicate that the planning application would definitely be refused on highway grounds, and the Highway Authority is a consultee, not the determining authority. Additionally, amendments were made during the application process after the Council's expressed position (correspondence dated 29 June 2022) that the harm to the character of the area would not be acceptable, and the application was not determined until sometime later on 17 May 2023.

6. I also accept, as noted by the appellant, that within the various Highway Authority responses there is some ambiguity with different terms used, references to outdated guidance and a lack of clarity regarding the inadequacies of the visibility splays and the extent of highway land. Whilst I have found in favour of the Council in relation to the appeal, I consider that the appellant was entitled to believe that this was not a hopeless case and that it should be tested at appeal.
7. Notwithstanding the above, there is no evidence before me that the Council have incurred any unnecessary expense as part of the appeal process. The Council's case as part of the written representation procedure is as set out in their case officer's report and other information which formed part of the planning application. No additional information has been produced by the Council to respond to any factual errors in the appellant's grounds of appeal or to address any new issues which have arisen since the application was determined.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and thus an award of costs is not justified.

G Ellis

INSPECTOR