



Costs Decision

Inquiry Held on 20-23 & 27-30 September and 4, 5 & 7 October 2022

Sites visit made on 3 October 2022

by G D Jones BSc(Hons) DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2023

Costs application in relation to Appeal Ref: APP/Y3615/W/22/3298341

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Berkeley Homes (Southern) Ltd for a partial award of costs against Guildford Borough Council.
 - The inquiry was, in part, in connection with an appeal against the refusal of planning permission for development described as hybrid planning application for outline planning permission (only access to be considered) for the erection of 4 self-build dwellings on land at 408-410 Lower Road, Effingham following demolition of all existing buildings; and full planning permission for the erection of 110 dwellings, with access, parking, community assets, landscaping, and associated works.
-

Decision

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

Reasons

2. The Government's Planning Practice Guidance states that irrespective of the outcome of the appeal, 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.
3. The application, the Council's response and the applicant's final comments were all made in writing. Consequently, there is no need for the respective cases to be repeated.
4. The application relates to the financial viability evidence. Criticism is made of the Council's evidence and conclusions relating to this matter, particularly the evidence of its witnesses Mr Fishlock and Mr Jones. This includes in respect to the number of pupils the school should cater for, the size of the school and the treatment and inclusion of associated facilities, costings for the school and facilities, and level of developer profit margin employed in the viability assessment.
5. As set out in my appeal decision, notably at paras 38-47, 48-65 and 66-70 regarding the need for a new school, the design and costings for the planned school and viability respectively, I disagreed with the Council's approach and conclusions on these matters in several significant regards. Nonetheless, these were all matters of professional judgement. While I disagreed with many of those judgements, they were, in my view, given reasonable explanation and justification by both witnesses. Indeed, Mr Fishlock and Mr Jones were both credible witnesses. The differences between the Council's and appellant's

evidence on these matters were, therefore, a consequence of varying professional approach and opinion rather than being symptomatic of unreasonable behaviour.

6. Accordingly, the Council's case on this topic cannot fairly be said to have been unreasonable, notwithstanding my own conclusions having regard to the wider evidence before me. Moreover, while I note the applicant's submissions regarding how the Council's evidence might have been prepared to fit with a predetermined position rather than determining that position based on good evidence, there is no substantiated evidence to support that view.
7. It would have been more helpful to the appeal process had the Council been clearer about its case on this matter at an earlier stage. Nonetheless, it appears to me that the appellant was reasonably able to deal with that evidence in the run up to and during the Inquiry. This, I feel, is reflected in the appeal outcome.
8. Taking all the above into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case and that an award of costs is not justified.

G D Jones

INSPECTOR