



Costs Decision

Site visit made on 10 October 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

Costs application in relation to Appeal Ref: APP/P3610/D/23/3319108 Verona, Horton Lane, Epsom KT19 8NX

- 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 Tony DeVivo for a full award of costs against Epsom and Ewell Borough Council.
 - The appeal was against the refusal of planning permission for Garden Play Room.
-

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, 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. Costs cannot be claimed for the period during the determination of a planning application. However, behaviour and actions at the time of a planning application can be taken into account in consideration of whether or not costs should be awarded.
3. In summary, the appeal site was the subject of a previously refused scheme¹. The applicant contends that in determining that application the Council made no objection to the proposal, save for the absence of an Arboricultural Assessment to demonstrate that the proposal would not have a harmful impact on nearby trees. The applicant states that email correspondence from the Planning Officer suggested that, were accompanying evidence provided to demonstrate that significant trees would not be harmed, the reason for refusal would have been addressed.
4. Subsequently, the applicant submitted a new scheme which was supported by an Arboricultural Assessment and which sought to overcome the previous reason for refusal. This is the subject of the appeal before me. However, whilst the application was refused due to the proposal's potential impact on the trees, a new reason for refusal related to the proposal being inappropriate development within the Green Belt was also included on the decision notice.
5. The applicant argues that, in the absence of any change in material circumstances, he was entitled to consider that permission would be granted given that the additional information was provided to address the previous

¹ Planning Application Ref 20/00161/FUL

reason for refusal. Local planning authorities are required to behave reasonably in relation to procedural and substantive matters at the appeal. They are at risk of an award of costs against them if they behave unreasonably by not determining similar cases in a consistent manner or by failing to have regard to its own adopted policies.

6. The Council's response confirms that it is regrettable that they did not identify that the site was in the Green Belt when assessing the first application. As a result, the Council did not carry out the wholly necessary Green Belt assessment.
7. The introduction of a new planning reason for refusal during the second planning application amounts to a significant error and would have been very frustrating to the applicant. For the reasons I have given in my formal decision, the Council were correct to carry out a Green Belt assessment and to refuse the scheme on this point. However, in doing so it has acted inconsistently and thus unreasonably.
8. Had the Council acted in a more consistent manner throughout the two applications then it is likely the appellant would have had adequate clarity and consequently the second application and subsequent appeal, and the costs associated with it, could have been avoided altogether. Therefore, the Council has acted inconsistently and thus unreasonably.
9. The applicant states that there are numerous examples of other local planning applications within the Green Belt which the Council have approved for reasons which are equally as applicable as those related to this appeal. However, in determining the appeal, I have considered the nearby applications referenced by the applicant and have found that they are not directly comparable to the appeal proposal. In any event, each case must be considered on its own merits.
10. The appellant has submitted concerns in relation to the Council's behaviour in determining the first planning application. However, my decision must only consider the Council's behaviour in the determination of the second planning application (which is the subject of this appeal), and therefore, I have made no further comment on these matters.

Conclusion

11. In conclusion, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 Epsom and Ewell Borough Council shall pay Mr Tony DeVivo the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Epsom and Ewell Borough 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. In the event that the parties cannot

agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

B Pattison

INSPECTOR