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## Costs Decision

Site visit made on 11 December 2023

**by John Wilde C. Eng M.I.C.E.**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 January 2024**

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### **Costs application in relation to Appeal Ref: APP/Z3635/W/23/3319062 Land at Manor Farm, Charlton Road, Shepperton TW17 0RJ**

- 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 Wayne Michaels for a full award of costs against Spelthorne Borough Council.
  - The appeal was against the refusal of planning permission for a residential development.
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### **Decision**

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

### **Reasons**

2. I have considered this application for costs in the light of the Government's Planning Practice Guidance (PPG). This advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour<sup>1</sup>.
3. In relation to substantive behaviour they include failing to produce evidence to substantiate each reason for refusal and unreasonably refusing planning applications and promoting vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. These are the grounds upon which the appellant has made the application for costs. I will therefore consider each of the reasons for refusal (RfR) in order.

#### *Inappropriate development/openness*

5. RfR 1 alleged that the proposed development would be inappropriate development in the Green Belt (GB) and would also harm the openness of the GB.
6. The Council correctly identify the starting point for the GB discussion is whether or not the appeal site is previously developed land (PDL). They then go on to accept the decision of a previous Inspector (APP/Z3635/A/13/2210225) that

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<sup>1</sup> Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

the appeal site is PDL and acknowledge that the housing development within the proposed development would *be located entirely on the PDL*. However, they then mention a strip of land to the east (shown to be open on the indicative plan) which they consider is not PDL and is *likely to be required for private gardens*. There is no substantive reasoning as to why this other strip of land is not PDL, and such a conclusion also conflicts with the comment in the Officer's report to committee that the scheme is *on the same site (subject site is slightly smaller)*.

7. Furthermore, the appeal was in outline and layout is a reserved matter. It follows that firstly, it is purely an assumption on the part of the Council that the strip of land may be used for private gardens and secondly, the Council would have the power at reserved matters stage to decree what, within reason, could be built where.
8. As regards openness, the Council do discuss this mentioning the existing buildings on the site and concluding that *the proposal would result in larger scaled properties spread across the site rather than in one part of the site*. Whilst I accept that it is difficult for Council's when an application is in outline, the fact is that scale and layout are reserved matters, and consequently within the power of the Council at reserved matters stage. To my mind by making an assumption, not backed up by concrete evidence, the Council have erred in their assessment of openness.

#### *Character and appearance*

9. The second RfR relates to character and appearance, and the Council take the view that the proposed development would appear as *an unduly cramped form of development*. As there is no approved layout plan, the application is for up to 30 dwellings, and the Council would have control at reserved matters stage, I consider this RfR to be unfounded.

#### *Heritage assets*

10. The third RfR related to the impact on Heritage assets. It would seem that the Council over estimated the number of locally listed buildings on the site. Furthermore, the Inspector in the previous appeal accepted that the demolition of the locally listed building was acceptable and that a building of suitable design could be constructed in its place. As the design and scale of the replacement building would be within the control of the Council it seems to me to be unreasonable to use this issue as a RfR.

#### *Affordable housing*

11. RfR 4 involves the provision of a suitable amount of affordable housing. Whilst the Council go into a great deal of detail in respect of Vacant Buildings Credit, the fact is that any affordable housing provision could have been the subject of a condition that in turn related to the final floorspace of the development.

#### *Open space and mix of dwellings*

12. RfR 5 and 6 relate to the provision of open space and the mix of dwellings. The mix of dwellings is in turn related to an extent to the layout and scale of the proposed development. These matters are therefore subject to reserved matters consent and should not be used as a RfR at outline stage.

### *Archaeology*

13. RfR 7 relates to the archaeological potential of the site and I note was not an issue brought up on the previous appeal relating to the site. To my mind, this once again, could have been the subject of a condition requiring further information at reserved matters stage, and the Council have acted unreasonably in refusing the proposed scheme on this ground.

### **Conclusion**

14. I have found that the Council have, in respect of inappropriate development, deviated from a previous Inspector's decision without giving substantial reasons for doing so. With regard to openness, the Council have arrived at a conclusion based on the scale and layout of the proposed buildings, both of these issues being reserved matters. With respect to the other RfR the Council have arrived at a conclusion on issues that are subject to reserved matters.
15. Overall, I consider that the Council have failed to substantiate their reasons for refusal, making assertions about the proposed development at the wrong stage of the process i.e. before consideration of reserved matters. They have also refused the application on grounds where a condition could have been imposed. They have therefore acted unreasonably and have delayed a development which should clearly be permitted. Therefore a full award of costs is justified.

### **Costs Order**

16. 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 Spelthorne Borough Council shall pay to Mr Wayne Michaels, the 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.
17. The applicant is now invited to submit to Spelthorne 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.

*John Wilde*

Inspector