



Costs Decision

Site visit made on 6 February 2024

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2024

Costs application in relation to Appeal Ref: APP/Y3615/D/23/3328516 Queensleigh, Salmons Road, Effingham, Surrey KT24 5QJ

- 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 Ian Watts of Space M Studio Limited for a full or partial award of costs against Guildford Borough Council.
 - The appeal was against the refusal of planning permission for the Replacement of existing outbuilding with new granny annex/outbuilding.
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. Paragraphs 16-028-20140306 and 16-030-20140306 of the Planning Practice Guidance (the PPG) advise that, irrespective of the outcome of an appeal, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Paragraph 16-049-20140306 of the PPG states authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This includes preventing or delaying development which should clearly be permitted, failure to substantiate reasons for refusal, or making vague, generalised or inaccurate assertions about the impact of a proposal unsupported by objective analysis.
3. The appellant is of the view the Council behaved unreasonably because it based its decision upon speculation as to the future use the building as a separate dwellinghouse and it did not accept an amendment to remove the kitchen element of the scheme. The Council is of the view it is not duty bound to accept amendments, and it assessed the scheme having regard to the evidence before it at that time and the provisions of Policy H4 of the Guildford Borough Local Plan Development Management Policies (2023) (the DMP).
4. The proposal conflicts with Policy H4 of the DMP, so it was a rational judgement for the Council to find as such. From the correspondence in respect of the Planning Contravention Notice the full evidence in respect of the existing use of the building was not available to it when the Council determined this appeal application. Based upon the evidence before me, I cannot conclude the Council behaved unreasonably in reaching the judgement it did in respect of Policy H4 or Green Belt exceptions.

5. However, the Council's views of the potential for the use as a separate dwellinghouse are speculative. It's assessment and decision notice also implies that use as a separate dwelling, resulted in it finding harm to the character of the area. Though it would not have addressed the conflict with Policy H4 of the DMP, the use of the building is a matter that could have been addressed by a planning condition. Therefore, this is unreasonable behaviour and addressing the matter has resulted in the appellant incurring unnecessary or wasted expense in the appeal process.
6. The Council's view the proposal would result in harm to the character of the site, street scene and area, lacks an explanation of the effects of concern and a justification for reaching that view. I have found the proposal would not be harmful in these regards. The Council has made vague, generalised and inaccurate assertions about the impact of a proposal unsupported by objective analysis. This is unreasonable behaviour and has resulted in the appellant incurring unnecessary or wasted expense in the appeal process.
7. The Council did not seek an amendment and there is no legislative provision requiring a planning authority to accept amendments to applications. The DMPO¹ requires a decision notice includes a statement explaining whether, and if so how, in dealing with the application, the planning authority have worked with the applicant in a positive and proactive manner. Paragraph 38 of the Framework² states a Council 'should' approach decisions in a positive and creative way. It is a policy aspiration rather than a legal duty and I see nothing leading me to conclude the Council has not met the legislative duty of the DMPO or behaved unreasonably in this regard.
8. The evidence in respect of the existing use was a significant factor in reaching my decision to allow the appeal. Therefore, I cannot conclude the Council should have permitted the application, and therefore a full award of costs should not be made. However, a partial award of costs is justified for addressing the alleged harm to character and the speculative views and assessment with respect to the future use as a separate dwellinghouse.

Costs Order

9. 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 Guildford Borough Council shall pay to Mr Ian Watts of Space M Studio Limited, the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred from contesting the alleged harm to character, and addressing the view the building would become a separate dwellinghouse; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the 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.

Dan Szymanski

INSPECTOR

¹ Article 35(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

² The National Planning Policy Framework (19 December 2023).