



## Costs Decision

Site visit made on 1 February 2024

**by A Price BSc MA MRTPI**

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

**Decision date: 28<sup>th</sup> February 2024**

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**Costs application in relation to Appeal Ref: APP/C3620/W/22/3313897  
Land rear of Opus 1, Ryebrook Business Park, Bay Tree Avenue,  
Leatherhead, Surrey, KT22 7LA**

- 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 Leatherhead 20 Limited for a full award of costs against Mole Valley District Council.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for redevelopment to provide residential units, landscaping, associated undercroft car parking, refuse and cycle storage.
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### 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, the 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.
3. There are several strands to the applicant's case for an award of costs. These include (not exhaustive): an unwillingness by the Council to engage in pre-application discussions or design review panel processes; that no urban design specialist was consulted on the scheme; the making of vague, generalised or inaccurate assertions about the proposal's impact; a failure to produce evidence to substantiate each reason for refusal on appeal; and preventing or delaying development which should clearly be permitted. This is alleged to have led to the appellant incurring unnecessary and wasted expense.
4. It will be seen from my decision, that I have concluded that there would be no harm to the character and appearance of the area, although I concur with the Council's decision on the other main issues. I have no details of whether the Council has an in-house design specialist, and discussions with the Design Review Panel are not mandatory. The decision in respect of design is one of planning judgement and planning authorities are not bound by any informal advice given by their officers, even were they available. I therefore do not find that the Council has acted unreasonably in this regard.
5. It is also clear that the Council considered the identified harm to conflict with specific development plan policies, later set out within the appeal documentation but also communicated with the appellant prior to the submission of the appeal. I do not find that the Council has acted unreasonably in this regard.

6. In respect of the appellant's attempt to engage with the Council at the pre-application stage, I note that the Council suspended these services due to resourcing limitations. Although not binding, this process, if it had been available, would have been an opportunity for the Council to raise any concerns at an early stage in respect of design, living conditions and affordable housing provision. The appellant, therefore, would have been well-informed and provided with the opportunity to amend the scheme as necessary.
7. The Council's resourcing is not a matter for the appellant, who sought an effective, positive and pro-active approach at an early stage. Given that the Council has an established pre-application function, which was suspended for a time, and which did not allow the appellant to use it, amounts to unreasonable behaviour. This is my view, irrespective of the Council's communications later in the process.
8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of pre-application advice and a partial award of costs is therefore warranted.

### **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 Mole Valley District Council shall pay to Leatherhead 20 Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred relating to the lack of a pre-application service; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Mole Valley District 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.

*A Price*

INSPECTOR