



Costs Decision

Hearing held on 6 February 2024

Site visit made on 7 February 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Costs application in relation to Appeal Ref: APP/ Y3615/W/23/3330834 Streamside Harpers Road, Ash, Guildford GU12 6DB

- 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 Andrew Kamm, Bourne Homes Ltd for a full award of costs against Guildford Borough Council.
 - The appeal was against the refusal of outline planning permission for 'demolition of existing house and outbuildings and erection of 22 new houses with associated parking and creation of new vehicular access'.
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Decision

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

Procedural Matter

2. The application for costs was submitted in writing at the Hearing. As I agreed with the parties, the Council's response to the application and final comments for the applicant proceeded through written submissions following the close of the Hearing. Because the submissions were made in writing, they are a matter of record and it is not necessary to rehearse them here.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('the PPG') advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
4. The PPG goes on to explain that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive. Examples of behaviour which may give rise to a substantive costs award against a local planning authority are noted as including failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; or preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Other examples include persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable, and not reviewing a case promptly following the lodging of an appeal as part of sensible on-going case management.
5. The decision of the Council's Planning Committee to refuse the planning application was contrary to the officer recommendation that permission should

be granted. However, the Committee was entitled to exercise planning judgement to reach a different conclusion on the merits of the proposal, albeit that there should be sufficient grounds to properly substantiate its decision.

6. The Council's first reason for refusal of the planning application related to effects on pedestrian and highway safety. A previous appeal decision on the site¹ ('the Previous Appeal') did not identify harm to highway safety, but highway safety was not a main issue considered by the Inspector in that appeal. Moreover, it seems to me that there could potentially have been changes to highway conditions since the Previous Appeal decision was made in 2019, including as a result of other development coming forward in the area. Consequently, I find that the Previous Appeal decision is not compelling evidence that the Council's reason for refusal was unreasonable or irrational.
7. The Local Highway Authority ('LHA') did not object to the current proposal. As the relevant statutory consultee, the LHA's views should be given great weight and there should be cogent and compelling reasons to depart from them.
8. In this case, the Council's appeal statement and submissions at the Hearing explain why it reached a different view, including detailed technical evidence. The Council did not respond to my invitation to provide a written response to highways rebuttal evidence submitted by the applicant. This would have been helpful, but I consider having regard to the Council's responses to my questions at the Hearing that it would have been unlikely to have significantly reduced the discussion at the event. There was no basic requirement on the Council to respond in writing and I consider the failure to do so was not in itself unreasonable. Nor am I aware of any specific requirement on the Council to have engaged with the LHA during the appeal process or to discuss its different views.
9. The appellant disagrees with the Council's concerns but that is not in itself proof of unreasonable behaviour. I have also found in my decision that there would not be unacceptable harm to highway or pedestrian safety. However, that reflects a series of planning judgements that I have reached on the balance of the evidence before me about the effects of the proposal, including in respect of levels of vehicular traffic, levels of pedestrian and cycle movements and the adequacy of access design. As part of this, I consider the Council to have given undue emphasis to a figure of 100 vehicles per hour using Harpers Road as a 'threshold'. However, while the Council accepted at the Hearing that this was not a requirement set out in policy, it explained the source of the figure with reference to guidance. I have disagreed about the application of the figure as a threshold in this case, but I am not persuaded that it was wholly without basis so as to be unreasonable. Furthermore, while the applicant asserts that the Council has failed to provide evidence that the impact on highway safety or residual cumulative impacts on the road network would be severe, I note that the National Planning Policy Framework refers to 'an unacceptable impact' rather than a severe impact in the context of highway safety.
10. My overall conclusion is consistent with that of the LHA. However, while I have ultimately disagreed with the Council's concerns, I do not consider the evidence to be so clear-cut that it was irrational or otherwise unreasonable for the Council to have reached a different view. In my assessment, the Council's

¹ Appeal ref APP/Y3615/W/19/3225673

evidence offers a clear and logical basis to adequately substantiate its concerns in respect of highway safety and provides a suitably cogent and compelling case to justify its departure from the LHA's views on the scheme.

11. Subsequent to the Council's determination of the application, an appeal decision was issued in respect of the neighbouring Orchard Farm site² which included a finding of no unacceptable harm to highway safety. I find nothing in my reading of the Orchard Farm decision declaring 100 vehicles per hour to be the threshold deemed acceptable on Harpers Road as the Council suggests. That said, while there is some consideration of cumulative traffic levels, I also find nothing in my reading of the decision declaring that potential cumulative traffic levels with other sites including the appeal site would necessarily be acceptable. Indeed, the decision notes that permission had been refused for housing at Streamside and a lack of certainty that development would come forward on sites to the east of Orchard Farm, commenting that proposals on that land must be considered on their own merits. Given the above, it seems to me that both parties have suggested interpretations of acceptable traffic levels that are not necessarily clearly borne out by the actual decision letter for Orchard Farm. While I consider these suggested interpretations to be overstated, the Orchard Farm decision does not to my mind automatically invalidate the Council's concerns which included cumulative effects of the proposal with Orchard Farm.
12. I note that the LHA did not object to a revised application for 24 dwellings on the appeal site in comments made after the appeal had been submitted. However, given my findings above that the Council had legitimately reached a different view to the LHA, I do not consider it was unreasonable for it to have maintained its objection following receipt of these comments.
13. Overall, I am satisfied that the Council did not behave unreasonably in imposing its first reason for refusal, nor in continuing to defend this reason for refusal at appeal. I consider that discussion of highway matters at the Hearing could not have been avoided.
14. The second reason for refusal concerns effects on living conditions for occupiers of Oakside Cottage in respect of privacy and overlooking. The Inspector in the Previous Appeal scheme did not identify harm to neighbouring living conditions. However, the details before me indicate that the dwelling now proposed on plot 13 would be around 1m closer to the site boundary than a dwelling in the Previous Appeal scheme, and that it would also be positioned further to the south bringing it closer to clear-glazed windows to the southern part of the side of Oakside Cottage. In my view, the cumulative effect of these differences is significant and could result in greater potential for overlooking. I cannot therefore agree with the applicant that there would be an almost identical relationship to Oakside Cottage as was the case in the Previous Appeal scheme. In this context, I find that the Previous Appeal decision would not be a determinative factor in respect of this matter.
15. Furthermore, the effect on neighbouring living conditions is a matter of planning judgement. I appreciate that the detail of glazing to the proposed dwellings would be considered as part of a future reserved matters submission. Noting reference in the Council's statement to plans of Oakside Cottage from 2007 and windows serving 'a variety of habitable rooms as well as a

² Appeal ref APP/Y3615/W/22/3312863

bedroom', it is also not entirely clear whether or to what extent the Council's finding of harm may have been influenced by effects on windows to a family room at the north of Oakside Cottage which have been blocked up internally. However, there remain windows to a bedroom and a family room towards the south of Oakside Cottage's side and there would be likely to be some requirement for habitable room windows to the front and rear of the plot 13 dwelling, even if not to its side elevation.

16. Although I have not agreed with all elements of the Council's case, I consider that its statement supplemented by its evidence at the Hearing adequately substantiated its concerns. Indeed, I have agreed with the Council that the proposal would result in harm to living conditions for occupiers of Oakside Cottage, albeit that I have found the harm would be limited and I have ultimately concluded that it would be outweighed by the benefits of the proposal. Notwithstanding that the officer recommendation did not identify unacceptable harm to neighbouring living conditions, I find that the Council has not behaved unreasonably in relation to the second reason for refusal.
17. I have disagreed with the Council's first reason for refusal and found the overall planning balance to come down in favour of the proposal, but these are matters of planning judgement and the evidence does not lead me to consider that any alternative conclusion would inevitably be unsound. It is not therefore apparent that the development should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material considerations.
18. I appreciate the applicant's frustration that the application was refused after extensive pre application engagement and a positive recommendation with no objections from statutory consultees. Nevertheless, the Council has provided adequate justification to substantiate its reasons for refusal and I consider that its defence of the appeal was reasonable. On this basis, I find that the appeal could not have been avoided, and it follows that the applicant has not been put to unnecessary or wasted expense.
19. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR