



Costs Decision

Site visit made on 20 May 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 JULY 2024

Costs application in relation to Appeal Ref: APP/R3650/W/23/3330968 Land at Foxwood, Hookley Lane, Elstead, Surrey GU8 6JD

- 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 and Mrs J Little for a full award of costs against Waverley Borough Council.
- The appeal was against the refusal of planning permission for development described as 'retention of dwelling and associated works'.

Decision

1. The application for a full award of costs is refused.

Preliminary Matter

2. I include abbreviations used in my appeal decision.

Background

3. 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. Both limbs must therefore be present to result in a costs award.
4. The alleged unreasonable behaviour relates to substantive matters during the Council's consideration of the application and in making its decision, as well as in the appeal, to the extent that the applicants consider the appeal should not have been necessary.

Reasons

5. The appeal application was a revised scheme following the previous appeal Inspector's decision. The applicants considered it overcame that decision. Amongst other things, as part of the current appeal application, the applicants set out their understanding of the Inspector's decision as well about fences and an LDC¹, also in their appeal statement. This includes matters of planning judgement which I have reconciled in my appeal decision.
6. The officer report referred to the Council's decision to refuse planning permission for the previous planning application and that it 'was appealed and the appeal dismissed'. Some differences between that application and the current appeal application were outlined. However, apart from housing land supply and effect on the living conditions of the occupiers of Foxwood, the officer report was silent about the Inspector's other findings.

¹ Planning, Sustainability & Design Statement, August 2023

7. The current appeal application included the same dwelling and there has been no change in relevant development plan policies or national planning policy since the previous appeal decision. Despite this, the officer report critically appraised the application against matters that the Inspector had clearly already found to be acceptable – ie the dwelling being small scale, its design and appearance including materials and position or siting. These aspects of the officer report were set out in relation to the character of surrounding built form and with alleged conflict with corresponding development plan policies.
8. Consequently, although the current appeal application was different in other respects to the previous appeal application, the position taken by the Council prior to its decision on these matters (that it ought to have realised and acknowledged were no longer material considerations) was unreasonable².
9. But notwithstanding this, the Council's reasons for refusal (RfR) in the current appeal application are essentially underpinned by material differences in plot layout. While somewhat unhelpfully interlaced with matters that were plainly no longer relevant (and which on the face of it may have clouded the issues to an extent) this was sufficiently explained in the officer report. The Council elaborated further in its appeal statement and I am satisfied it substantiated both RfR.
10. It was not, therefore, unreasonable for the Council to pursue this distinction between both applications and the previous appeal decision in the way that it did, which led to planning permission being refused. RfR1 is about an aspect of character and appearance not before the previous Inspector. RfR2 was a permissible 'new issue' because it flowed from a different plot layout, so was not a matter in dispute in the previous appeal. It will be evident from my appeal decision that the actions of the Council in these regards has not prevented or delayed development which should clearly have been permitted.
11. I appreciate that by the time the current appeal was lodged, the applicants may have thought it necessary to address the entire officer report, not just those parts relevant only to the RfR. Amongst other things, that has led to my appeal decision endorsing the previous Inspector's findings on certain matters.
12. However, there is no evidence the applicants sought to clarify or resolve any of these matters with the Council in light of the previous appeal decision and as a basis for a new application, including the current appeal application. Nor did the applicants apparently contemplate a revised planning application and further pre-application advice with the benefit of the officer report and RfR, as is advocated by the NPPF and PPG. Instead, they decided to pursue the appeal.

Conclusion

13. For the reasons given above, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process, as described in PPG, has not been demonstrated. Accordingly, a full award of costs is not justified, nor is a partial award for these same reasons.

Robin Buchanan

INSPECTOR

² PPG paragraph 16-049-20140306, bullet points 6 and 7