



Costs Decision

Site visit made on 24 September 2024

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2024

Costs application in relation to Application A Ref:

APP/A3655/W/23/3333797

Allenbuild House Oyster Lane, Byfleet, WEST BYFLEET, Surrey KT14 7JQ

- 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 Mountbatten Estates for a [partial] [full] award of costs against Woking Borough Council.
 - The appeal was against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class ZA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the demolition of existing two storey detached building together with the construction of a replacement four storey building providing x32 flats together with associated works permitted by Part 20, Class ZA.
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Costs application in relation to Application B Ref:

APP/A3655/W/23/3334988

Allenbuild House Oyster Lane, Byfleet, WEST BYFLEET, Surrey KT14 7JQ

- 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 Mountbatten Estates for a full award of costs against Woking Borough Council.
 - The appeal was against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class ZA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the demolition of existing two storey detached building together with the construction of a replacement four storey building providing x32 flats together with associated works permitted by Part 20, Class ZA.
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Decision

1. Application A is refused.
2. Application B is refused.

Reasons

3. 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.
4. The applicant alleges that the Council's assessment of flood risk, garden space, daylight and noise is unreasonable due to a lack of evidence, and citing reasons which are not included within the remit of class ZA of the GPDO.

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5. I have accepted that the appeal site is in Flood Zone 1 currently. However, it is very close to the edge of Flood zone 3. The Council's Strategic Flood Risk Assessment and applicant's Flood Risk Assessment (FRA) do not include allowances for climate change sufficiently to demonstrate that the appeal site would not be subject to flooding in the future. The National Planning Policy Framework (the Framework) makes it clear at paragraph 167 that all plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. The Environment Agency provide figures which should be considered when modelling the effects of climate change when undertaking FRA's. I do not consider therefore that the Council has been unreasonable in asking for the evidence to demonstrate that the proposal would be free from flooding risk in the future.
 6. Furthermore, paragraph 168 of the Framework makes it clear that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. As the proposal would be in an area identified in the SFRA as at medium risk from surface water flooding then a sequential test should have been carried out irrespective of the depth of the flooding, particularly given that the end user would be a more vulnerable residential use.
 7. I have found in my decision that it would be appropriate for the Council to have regard to external garden space in its assessment under part (g) of Class ZA of the GPDO. I do not therefore consider this to be unreasonable behaviour.
 8. The applicant considers that the lack of complaints from existing residents in the area regarding the existing industrial activity and the fact that the appeal site is on the northern fringe of the estate means that the Council is unreasonable as raising this issue as a concern. Furthermore, the Council has produced no evidence to support its reason for refusal.
 9. However, I have found in my decision that the other residential properties in the area would not have a similar relationship to the specific uses on the industrial estate that the Council cite as a concern. Furthermore, just because there is no history of complaint, that does not mean to say that there would be none in the future. I understand that this is a difficult issue to assess. However, the future residents would be adjacent to particularly noisy uses, which have not been recorded in the noise report. Furthermore, the extant planning permissions in the immediate vicinity mean that there could be further B2 and B8 uses which are not subject to time constraints that may legitimately lead to complaints from residents, particularly if the changes occur after residents have moved into the property. I do not consider therefore that the Council has been unreasonable in raising this concern.
 10. The proposal under appeal A was accompanied by a Daylight report when considered by the Council which demonstrated that there would be adequate daylight in all habitable rooms. The proposal under appeal B did not have a daylight report, and the internal layouts would be significantly different to those on the scheme under Appeal A. Therefore I do not consider it unreasonable that the Council reached a different decision on the scheme under Appeal B given the notable change. The Council in its reason for refusal and appeal statement explained its approach with reference to development plan policy with particular regard to the changes in the scheme. Although I

have reached a different decision, I do not consider the Council's approach to be unreasonable.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, for the reasons given above, I refuse the application for an award of costs.

Zoe Raygen

INSPECTOR