



Costs Decision

Site visit made on 29 October 2024

by R Cahalane BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2025

Costs application in relation to Appeal Ref: APP/R3650/W/24/3345327 Little Heath, Linkside West, Hindhead, Surrey GU26 6PA

- 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 Simon Foster of KAT Investments (Surrey) Limited for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for: refurbishment and extension of existing dwelling. New detached dwelling.
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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. Paragraph 049 of the PPG sets out examples of unreasonable behaviour by local planning authorities which includes persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable. This list of examples is not exhaustive, and the appellant also contends that the Council's Planning Committee gave weight to a policy which no longer forms part of the development plan.
4. A Planning Committee is entitled to take a decision contrary to the advice of its professional officers. That in itself is not grounds for an award of costs. However, the reason for doing so must be supported by robust objective evidence and in any appeal the Council must produce evidence to substantiate its decision.
5. The Officer Report (OR) to Committee clearly sets out the Inspector's conclusions made in determining the previous appeal¹ at this site, a copy of which was provided to Committee Members. The OR also accurately summarises that Inspector's findings and set out that the difference between the current proposal and the previously appealed application is that the third plot to the side of Little Heath is omitted.
6. It is clear that the overall unacceptable harm to the character and appearance of the area, as identified by the previous Inspector, related only to the dwelling

¹ APP/R3650/W/22/3296043

to the side of Little Heath, but which does not form part of the current appeal proposal.

7. The appellant has provided a verbatim written transcript of the Committee meeting, the contents of which has not been disputed by the Council. This indicates that the only development plan policy referred to by Committee Members during the debate was Policy BE6 of the 2002 Local Plan. Whilst the Local Plan Part 2: Site Allocations and Development Management Policies (LPP2) was adopted after the previous appeal decision was made, the OR states that Policy BE6 was not carried over into this new Local Plan. The OR also does not set out any material change to the development plan policy context from when the previous appeal was determined, and this matter was not debated at Committee.
8. Whilst Policy BE6 was referred to in the past tense in the context of areas that are still worthy of protection, it no longer has any statutory force, and there was no reference throughout the Planning Committee debate to the current development plan in this regard.
9. As also set out in the Committee transcript, only passing references were made to the abovementioned previous appeal decision, despite it forming a significant material consideration as a recent decision within the appeal site and including a very similar dwelling to that currently proposed. The reason for refusal in the Council's decision notice cites conflict with its current development plan policies, including overlooking of the rear of neighbouring properties. It appears however that this matter was not debated in any detail by Committee.
10. The Council has not solely relied upon the Committee debate in defending this appeal, and its appeal statement of case also refers to its current development plan policies. I acknowledge that character and appearance is a matter of planning judgement. However, the reason for departing from the previous Inspector's conclusions has nonetheless not been substantiated by new planning policy context or other differing circumstances since that appeal decision was made.
11. Statute² requires determination of planning proposals to be made in accordance with the development plan unless material considerations indicate otherwise. Based on the evidence before me, it has not been demonstrated that the Planning Committee met this duty in resolving to refuse planning permission contrary to the recommendation of professional officers.
12. As I have found the current proposal to comply with the development plan as set out in my appeal decision, the above matters represent unreasonable behaviour resulting in unnecessary or wasted expense. A full award of costs is therefore warranted.

Costs Order

13. 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 Waverley Borough Council shall pay to Simon Foster of KAT Investments (Surrey) Limited, the costs of the appeal proceedings described in the heading

² Planning and Compulsory Purchase Act 2004 (As Amended), section 38 (6)

of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Simon Foster of KAT Investments (Surrey) Limited, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Cahalane

INSPECTOR