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## Costs Decision

Site visit made on 2 April 2025

by **S Rawle BA (Hons) Dip TP Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 16<sup>th</sup> April 2025

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### **Costs application in relation to Appeal Ref: APP/P3610/W/24/3350483 9-10 Kirby Close, Ewell, Surrey KT19 0PW**

- 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 Ultra Green Developments for a full award of costs against Epsom and Ewell Borough Council.
  - The appeal was against the refusal of planning permission for the demolition of two existing detached bungalows and erection of two semi-detached pairs of dwellings (comprising a minimum of 4 dwellings and a maximum of 4 dwellings) with associated parking and landscaping.
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### **Decision**

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

### **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. The application essentially relies on the applicant's view that the Council failed to substantiate its reasons for refusal but rather refused permission on the basis of a statement with no justification. They ignored the professional advice of the Officers and did not adequately review the relevant information and had a pre-determined view on the application and had a disrespectful view of the applicant. Moreover, they did not have adequate knowledge of the permission in principle process nor did they take adequate account of permitted development rights. The applicant also points out that the principle of development, including density, location, land use, amount of development and visual character and appearance were accepted by the Council in a recent application for four 3 bed residential dwellings on the appeal site which was only turned down due to the lack of a bat survey. This they say demonstrates the unreasonable behaviour of the Council in refusing this case.
4. The Council do not accept that it has failed to substantiate its reasons for refusal as Members of the Planning Committee had a detailed discussion during the relevant meeting prior to making their decision. Moreover, the reasons for refusal clearly explain the material planning concerns of the Council and refers to a specific policy of the development plan. Further, there is no evidence that Members had a pre-determined view of the application. Also, it is understandable that there was some discussion at the relevant Planning Committee meeting on the permission in principle process, the relevance of permitted development rights and whether the cul-de-sac was characterised by single or two storey dwellings.

5. To my mind, whether or not the site is suitable for residential development for a maximum of four dwellings having regard to the effect the amount of development would have on the character and appearance of the area is a matter of planning judgement. The Council's appeal statement makes a sufficient case to support their view. Further, their judgement is supported by specific references to a relevant policy of the development plan that deals specifically with density. This is a relevant material planning consideration when considering the amount of development under the permission in principle planning regime.
6. I am satisfied that it is not unreasonable that Members have reached a different view from the Council's Officers. I accept that at times some of the discussion at the Planning Committee meeting strayed away from the planning merits of the case and some comments, particularly the comment about the profit motive of the applicant is unfortunate. Moreover, there does appear to have been some confusion about the permission in principle process and what matters Members should consider.
7. However, the DC Manager provided sound professional advice to Members on the permission in principle regime, the relevant permitted development rights and the need to take account of the provisions of paragraph 11 of the National Planning Policy Framework (referred to as the tilted balance in the transcript of the Planning Committee meeting). I have no reason to doubt that Members had these matters in mind during their consideration of the case. Moreover, ultimately, Members were steered back to the matter at hand and reached a decision to refuse the application which they were entitled to do based on their own planning judgement. I am not persuaded that Members demonstrated an unreasonable pre-disposition to refuse the application nor do I consider that they had not adequately read the supporting information.
8. The fact that a subsequent application has been refused only because of the lack of a bat survey does not mean that Members acted in such an unreasonable manner in this case to justify an award of costs. While I have come to a different judgement on the planning merits, I consider that the approach of the Council was arguable.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*S Rawle*

INSPECTOR