



Costs Decision

Inquiry held on 11-14, 18-21, 24, 25, 31 January; 1, 2 February; 17, 18 March 2022

Site visits made on 8 January and 16 March 2022

by Christina Downes BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10th May 2022

APPLICATION A

**Costs application in relation to Appeal Ref: APP/Y3615/W/21/3273305
Land at Ash Manor, Ash Green Road, Ash, Guildford, GU12 6HH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Bewley Homes Plc for an award of costs against Guildford Borough Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of 73 dwellings with associated vehicular and pedestrian access from Ash Green Road, parking and secure cycle storage, onsite open space, landscape and ecology management and servicing.
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APPLICATION B

**Costs application in relation to Appeal Ref: APP/Y3615/W/21/3273305
Land at Ash Manor, Ash Green Road, Ash, Guildford, GU12 6HH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
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Decisions

1. Application A is refused.
2. Application B is allowed in part.

Reasons

3. The *Planning Practice Guidance* 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.

Application A

4. The application and response were made in writing and are not repeated here. In essence, the unreasonable behaviour being alleged by the Applicant is said to relate to substantive matters. In other words that the Council provided

- inadequate justification at the inquiry to explain why it did not grant planning permission. However, there is also the allegation that the Council failed to adopt a co-operative approach, which would have either avoided the appeal or else narrowed the issues and reduced the expense. Whether or not this relates to a procedural matter it does seem to indicate that a partial award is also being sought.
5. The first point concerns whether it was reasonable for the Council to rely on heritage harm when it had allocated the site as part of the policy A31 land and therefore recognised that such harm would be inevitable. As set out in my Decision, the policy A31 land comprises a number of unrelated parcels under a variety of ownerships. Most of it has already either been built out or is subject to planning permission. Furthermore, the 1,750 dwellings in the allocation derive from an assessment of capacity and are indicated in the policy to be approximate. The Council confirmed that a detailed heritage assessment had not been undertaken as part of the LPSS process. The Council agreed that some level of harm would be likely to arise as a result of any development of the appeal site. However, it was not saying that development was unacceptable in principle. Its evidence to the inquiry was that the development being proposed was not acceptable. That was the Council's judgement and was a perfectly reasonable position to take.
 6. It is clear that extensive discussions took place between the Applicant and the Council over a number of years and that adjustments to the scheme were made to meet the concerns of both Officers and Members during this period. Those were documented extensively in the evidence and explained at the inquiry. The Planning Officers supported the scheme throughout and in January 2020 the Council granted planning permission for a development of 73 dwellings. None of this is disputed.
 7. However, circumstances changed in December 2020 when AGRA successfully challenged the grant of planning permission through judicial review. Thereafter the Planning Officers continued to support the scheme and the letter from the Council's Managing Director seems to me to also be relatively supportive in its tone. Whether or not the reason for quashing the planning permission was on "*a very narrow point*" as he stated, it was indisputably on a very important one. Mrs Justice Lang concluded that the Planning Committee had been misled regarding the balancing exercise and that on the balance of probabilities a different decision could have been reached if it had been properly advised.
 8. It is difficult to understand the point that the Applicant makes about the Council's "*volte face*" and lack of notice about its change of position regarding the acceptability of the scheme. It is of course the case that regardless of past discussions, it was the Planning Committee and not the Planning Officers who was the responsible decision maker in this case. It was not obliged to accept the Planning Officers' recommendation. Once properly advised it reconsidered the planning balance and was entitled to conclude a decision in favour of the conservation of the heritage assets. That is a conclusion with which I happen to agree as is explained in my Decision.
 9. There were two planning applications being considered by the Planning Committee at its meeting in September 2021. It had no jurisdiction over the appeal application because it had already been appealed on the grounds of non-determination several months previously. However, the application that

had been subject to judicial review was refused planning permission and the objections were similar for both. I can understand that after all that had taken place up to this point, the Applicant was expecting a favourable outcome and was very disappointed when this was not forthcoming. However, members do not always follow their officers' advice. That is local democracy rather than dysfunction and I find it hard to believe that this was not appreciated by the Applicant's very experienced team.

10. Putative reason for refusal 3 relates to the pond and concerns the lack of information to properly assess the landscape impact. However, this had not been raised as a concern prior to the September 2021 Committee meeting, including when the Council granted planning permission in January 2020. Nevertheless, a considerable amount of additional evidence was submitted by the Applicant in relation to the pond after the September meeting, most particularly the "Pond Pack" in December 2021. The Council nonetheless persisted with the putative reason but its evidence to the inquiry on the matter was very scant. I held a round table session on landscape, but the Council made very little contribution to it. It provided insufficient justification for its objection on this ground, and this was unreasonable. However, AGRA's landscape objection included similar grounds. In the circumstances, the Applicant would have had to produce its own evidence on the matter and inquiry time would have had to be expended to discuss it. For these reasons the Applicant was not put to unnecessary expense in this regard.
11. In conclusion, the Council acted unreasonably solely in respect of the issue of the landscape effect arising from changes to the pond. However, there was no unnecessary expense to the Applicant because the matter would have had to be addressed anyway. As unreasonable behaviour has to result in unnecessary expense for a costs award to be successful, Application A does not succeed either in full or in part.

Application B

12. The application and responses were made in writing. It solely concerns the Appellant's costs application, which is alleged to have been made unreasonably. The recompense sought is for the expense of responding to it.
13. A costs application made on this basis is unusual but not novel. Indeed, a decision was submitted by the Applicant where such an application had been successful. However, it seems to me that such applications must go beyond the mere failure to succeed otherwise an applicant would be at risk of incurring such costs whenever its application was refused. To my mind the application would have to be hopeless with no chance of success.
14. In this case the Appellant's claim about unreasonable behaviour in respect of the allocation relied on various factors and engendered a great deal of discussion at the inquiry. There was evidence given by all parties as to housing land supply and the contribution that the site would make to it. There were differing views about the relevance of the scale of heritage harm in the balancing exercise. There were disputes as to the extent that the policy A31 allocation in the LPSS factors in heritage harm. These and other matters demonstrate that the matter was not cut and dried but involved arguable points and judgements. The allegation of unreasonable behaviour on this point was not therefore a hopeless one, even though I did not agree with it.

15. With regards to the pond issue, I have agreed that the Applicant behaved unreasonably. Although I concluded there was no wasted expense, the application was not hopeless.
16. The point relating to failures in communication is very difficult to understand. Whether it was raised as a substantive or procedural matter, the Appellant's position regarding the decision-making process was not supportable for the reasons I have given in relation to Application A. In my opinion this allegation was unreasonable, had no chance of success and should not have been made. The Applicant was put to the unnecessary expense of having to deal with it.
17. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award is justified in relation to Application B.

Costs Order

18. 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 Bewley Homes Plc shall pay to Guildford Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the point about failures in communication in the Appellant's costs application (Application A); such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The Applicant is now invited to submit to Bewley Homes Plc, 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.

Christina Downes

INSPECTOR