
Costs Decision

Site visit made on 21 November 2016

by A A Phillips BA(Hons) DipTP MTP MRTPI

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

Decision date: 2 December 2016

Costs application in relation to Appeal Ref: APP/L5810/W/16/3156689 Lower Ground Floor, 57 Church Road, Richmond TW10 6LX

- 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 George Wills for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against the refusal of planning permission for change of use from current use by the Labour Party (D2) to use as a residential dwelling (C3) with a rear extension.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 PPG states that examples of unreasonable behaviour by local planning authorities include the following:
 - i. Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - ii. Persisting in objecting to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
 4. The appellant submits that the local planning authority acted unreasonably in that its decision to refuse planning permission on the grounds of a lack of affordable housing contribution is contrary to national policy as set out in a Written Ministerial Statement (WMS). Furthermore, that the Council has failed to appropriately consider numerous Secretary of State or Inspector decisions in the determination of the application.
 5. The reason for the refusal set out in the decision notice is complete and refers to policies of the development plan with which the proposal would be in conflict. However, although the officer report demonstrates how the proposal would conflict with the development plan in terms of the lack of affordable
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housing provision it makes no reference to the WMS and the change in the Government's approach to tariff style affordable housing contributions and updated paragraphs in PPG, which are significant material considerations.

6. It is acknowledged that there are particular local circumstances which demonstrate that a balance needs to be made when determining cases of this nature. Furthermore, there are recent similar cases which have been allowed and planning permission granted with tariff style contributions. However, in refusing planning permission the Council's local evidence demonstrating that affordable housing need remains substantial was not fully addressed. There is no evidence that the local planning authority reached a balanced decision taking account of all relevant material planning considerations relating to the matter of affordable housing contributions.
7. Consequently, although recent planning appeal decisions demonstrate that local evidence and the requirements of the development plan can outweigh the provisions of the WMS and that the statutory position does remain that planning application are required to be determined in accordance with the development plan unless material considerations indicate otherwise, in this case the local planning authority has acted unreasonably.
8. Furthermore, in spite of there being appeal decisions where Inspectors did not support the position taken by the local planning authority it persisted in its approach.
9. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
10. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 the Council of the London Borough of Richmond-upon-Thames shall pay to Mr George Wills, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Council of the London Borough of Richmond-upon-Thames, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alastair Phillips

INSPECTOR