

## Costs Decision

Site visit made on 21 March 2017

**by Graeme Robbie BA(Hons) BPI MRTPI**

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

**Decision date: 12 May 2017**

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### **Costs application in relation to Appeal Ref: APP/L5810/W/16/3165298 115 - 121 Uxbridge Road, Richmond upon Thames, Hampton TW12 1SL**

- 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 Ferguson (London and District Properties (Management) Ltd) for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
  - The appeal was 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 a first, second and third floor extension to 115 – 117 Uxbridge Road to provide four self contained flats and associated cycle store, refuse storage, car parking and landscaping.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural – relating to the process, or substantive – relating to the issues arising from the merits of the appeal.
  3. The Guidance states that costs cannot be claimed for the period during the determination of the planning application, but is clear that all parties are expected to behave reasonably throughout the planning process and that behaviour and actions at the time of the planning application can be taken into account in considering whether or not costs should be awarded. It goes on to give examples of behaviour that may give rise to a procedural award against a local planning authority including, amongst others, a lack of co-operation with the other party or parties, delays in providing information or failure to adhere to deadlines. It is on these grounds that the appellant's application for a full award of costs is made.
  4. Whilst the appeal to which this costs application relates arose from the failure of the Council to determine the application within the prescribed period, I have no evidence to suggest that the Council's behaviour during the appeal itself has been unreasonable or has displayed a lack of co-operation, delay or failure to adhere to deadlines. I accept that the Council may have left it very late in the day to publish the consultation and publicity comments and to communicate their concerns over the proposal with the appellant, but it is clear that they eventually did so.
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5. Furthermore, it appears that the appellant subsequently responded with additional information. It seems somewhat puzzling therefore that, having done so, an appeal against the Council's failure to determine the application was lodged the following day. In any event, I am satisfied that the Council clearly set out their concerns and comments at that stage, including the principle of a linking extension between the two buildings, and with regard to affordable housing. Although pre-dating those comments by a day, I note that the appellant indicated that they would give further consideration to the Council's approach to continuing to seek affordable housing contributions in light of changes to national policy brought about by the Court of Appeal judgement of 11 May 2016<sup>1</sup> and subsequent revisions to the Guidance.
6. Although I have reached a different conclusion to the Council with regard to the need for contributions for the provision of affordable housing, I do not consider that the Council's stance on this matter was either unreasonable or to have led the appellant to incur unreasonable or unnecessary cost. The justification for their approach is set out in detail in the Council's Statement of Case, as are concerns relating to the effect of the proposal on the character, appearance and setting of the appeal buildings. These concerns were also set out in the Council's feedback to the appellant during the course of the application and prior to the submission of the current appeal.
7. I acknowledge the appellant's right to lodge an appeal against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. However, it appears to me that the appellant's decision in this instance cut short the, albeit somewhat belated, dialogue that the Council had sought to restart.
8. Thus, on the available evidence I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is not therefore justified.

*Graeme Robbie*

INSPECTOR

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<sup>1</sup> Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441 on 11 May 2016 in respect of a Written Ministerial Statement of 28 November 2014.