
Costs Decision

Site visit made on 19 April 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 9 June 2017

Costs application in relation to Appeal Ref: APP/L5810/W/16/3161871 4A New Broadway, Richmond upon Thames, Hampton Hill TW12 1JG

- 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 Cormac Dolan 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 conversion of existing 3 bed flat into 2 x 1 bed flats.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and has thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Awards against a local planning authority may be either procedural relating to the appeal process or substantive, relating to the planning merits of the appeal.
 3. Paragraph 49 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of this, set out in paragraph 49 of the PPG and of relevance to the points raised by the appellant in the application for an award of costs include:
 - 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;
 - Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - Acting contrary to, or not following, well-established case law;
 - Requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework on planning conditions and obligations; and
 - Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector as previously indicated to be acceptable.
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4. The reason for refusal set out in the Council's decision notice is complete, precise and relevant to the proposed development and clearly sets out which development plan policy and supplementary planning document the appeal proposal would conflict with. This reason for refusal was substantiated by the Council in the delegated report and statement of case with reference to the evidence base which underpins the relevant development plan policy and supplementary planning document.
5. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
6. It is clear from the evidence before me that, in determining the application the Council had due regard to relevant material considerations including the Secretary of State's Written Ministerial Statement of 28 November 2014 and subsequent alterations to the PPG on planning obligations for affordable housing and social infrastructure and weighed this against development plan policy in the planning balance.
7. There is a clear policy requirement to have a viability assessment independently reviewed at the expense of the applicant and the applicant was not willing to do so. In these circumstances, the Council could not be certain that either the maximum financial contribution towards off-site provision could be made or that a contribution would render the scheme unviable. I agree that the Council's planning officer would not have the technical expertise to verify the credibility of the report and thus the Council has not acted unreasonably in this regard.
8. Whilst a number of appeal decisions were put forward in support of the applicant's case, the Council were also aware of appeal decisions which supported their case and in the absence of the evidence which was before the inspector in those cases it could not be certain that they were directly comparable to the appeal proposal.
9. There is conflicting evidence before me in relation to the validation process of the application; however, none of these matters would have altered the outcome of the Council's decision or the necessity of the applicant to appeal their decision.

Conclusion

10. In conclusion, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance has not been demonstrated.

Caroline Mulloy

Inspector