
Costs Decision

Site visit made on 11 January 2017

by **S J Lee BA(Hons) MA MRTPI**

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

Decision date: 16th June 2017

Costs application in relation to Appeal Ref: APP/K3605/W/16/3160470 Land to the rear of 255-259 Hersham Road, Hersham, Walton-on-Thames KT12 5PZ

- 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 S Merchant, Pendragon Development Ltd for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for what was originally described as the "formation of 2 x pairs of semi-detached two storey dwellings, 2 with attached garages on the land to the rear of 255-259 Hersham Road".
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Decision

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

Reasons

2. 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 applicant has argued that the Council did not give due weight to the Written Ministerial Statement (WMS) and PPG concerning the making of financial contributions for affordable housing for schemes of fewer than 10 dwellings. Moreover, they consider that the Council did not have regard to an appeal decision which concluded the WMS and PPG should outweigh the relevant development plan policy. In this regard, the applicant considers the original application should have been granted and unnecessary expense has been incurred in progressing to appeal.
 4. The relevant court judgements and guidance associated with this issue do not alter the statutory status of the development plan. The weight to be given to the WMS and PPG are matters of judgement for the decision maker. These are clearly important material considerations and there is no suggestion the Council did not have due regard to these in their consideration of the application. The fact they have produced a statement which explains their approach in relation to the WMS is evidence of this.
 5. In addition, there are examples of appeals where the Council have been successful in arguing a contribution is necessary which has clearly given them some comfort that their approach is not unreasonable in principle. I consider this to be a reasonable assertion and see nothing inherently unreasonable in
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the Council wishing to pursue development plan policy in full recognition that the WMS/PPG are significant material considerations.

6. I recognise the Council did not address the specifics of the appeals where the Inspector's found a contribution was not necessary or the appellant's points on the Council's five year supply. However, I do not consider this in itself to be evidence of unreasonable behaviour. The Council's case relied primarily on their own evidence of need for the delivery of small sites and affordable dwellings and that this should be given significant weight. The weight that should be given to CS housing policies when there is no five year supply are also matters of planning judgement. The primacy of the development plan remains in place and it is legitimate for the Council to give significant weight to their affordable housing policies if they consider it justified. I am satisfied that the Council provided sufficient evidence for me to consider the appeal in full and have sought to fully substantiate their reason for refusal.
7. In conclusion, I do not consider that there is evidence of unreasonable behaviour resulting in unnecessary or wasted expense in this case.

S J Lee

INSPECTOR