
Costs Decision

Site visit made on 13 December 2016

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 19 July 2017

Costs application in relation to Appeal Ref: APP/K3605/W/16/3159333 Regency House, 18 Church Street, Esher, Surrey KT10 8QS

- 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 Paul Williams ABS Business Centres Ltd for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal to grant planning permission under Section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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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 appellant's application for an award of full costs is based on the unreasonable behaviour of the Local Planning Authority (LPA) resulting in unnecessary or wasted expense in the appeal process. The appellant states that the LPA was unreasonable as refusal was unnecessary as the proposal complies with local and national planning policy and they have since failed to present evidence to substantiate their Reasons for Refusal.
 4. The reasons for refusal set out in the Council's decision notice are reasonably complete, precise and relevant to the application, although they do not specifically deal with whether conditions No. 2 and No. 6 should be varied. They state the policies of the Elmbridge Development Management Plan 2015 and the Elmbridge Core Strategy 2011 (CS) that the proposal would be in conflict with. They also clearly state the Design and Character Supplementary Planning Document 2012 (SPD) and the National Planning Policy Framework (the Framework) as the appropriate supporting planning documents that the proposal would be in conflict with.
 5. In this case, the reasons for refusal have been adequately substantiated by the Council in its officer report. The officer report demonstrates the Council's view as to how the proposal would fail to preserve or enhance the character or appearance of the Esher Conservation Area (CA) and would harm the living conditions of the occupiers of the neighbouring properties, using the evidence
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- submitted by the appellant, third party representations and the Council's observations.
6. The appellant also states that the Council's reasons for refusal fails the requirements for clarity and precision in relation to their reference to unspecified provisions of the SPD, the Framework and Policy CS26 of the CS on flooding. The Council acknowledge that Policy CS26 is not relevant and should not have been referred to in their decision in this instance. Whilst the Council could be judged to have failed in this respect, I consider the officer's report and the correspondence with the appellant outlined in the LPA submission provide sufficient clarity on the relevant paragraphs in the Framework and the SPD that the proposal would be in conflict with.
 7. The appellant contests that the LPA acted unreasonably as the Council failed to visit the site either during the period that the planning application¹ was being determined or during the summer months to obtain a full impression of the screening provided by the mature trees and the vegetation for the proposed development in the surrounding area. Whilst I appreciate the appellant's concerns regarding the Council not visiting the site during the application process, the officer's report and the LPA submission demonstrated that an appropriate assessment was made of these matters during the application process.
 8. The LPA submission and supporting evidence clearly shows that the Council actively engaged with the appellant during the application process and carried out their duty to assess the development proposal as submitted.
 9. It will be seen for the reasons set out in my appeal decision, that whilst I do not agree with the Council in respect of the impact on the living conditions of the occupiers of the neighbouring properties, I do concur with them that there were sufficient grounds relating to the harm caused by the proposal to the CA and that condition No. 2 is reasonable and necessary to preserve the character and appearance of the CA. I also concluded that condition No. 6 is necessary in the interests of the safety of all highway users. I came to that decision based on my consideration of the details and merits of the development, having regard to all the evidence and other matters raised.
 10. However, these are matters of planning judgement based on an assessment of fact and degree of the effects on the main issues relating to the development. The Council were entitled to form their own views about the impacts of the development even though, for the reasons set out in my appeal decision, I have reached a different conclusion on the planning merits of the case in respect of the impact on the living conditions of the occupiers of the neighbouring properties. Nonetheless for the reasons that I have given, I cannot agree that the Council has acted unreasonably in this case.
 11. I therefore find that unreasonable behaviour by the LPA resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Troy

INSPECTOR

¹ 2016/1076