Costs Decision

Site visit made on 6 November 2017

by S Jones MA DipLP

an Inspector appointed by the Secretary of State

Decision date: 31st January 2018

Costs application in relation to Appeal Ref: APP/K3605/W/17/3180413
Rear of 1 Park Road, East Molesey KT8 9LD

- 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 Elmbridge Borough Council for a partial award of costs against Ember Estates Ltd.
- The appeal was against the refusal of planning permission for erection of a detached chalet bungalow.

Decision

1. The application for a partial award of costs is refused.

Reasons

2. The Planning Practice Guidance 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 states that costs should be awarded because Ember Estates acted unreasonably because the issue of viability and affordable housing contributions was not raised at application stage. Furthermore under the explanatory text to Policy CS21 which covers affordable housing contributions it is stated "In the exceptional circumstances where it is considered that …..the policy is unviable, this must be demonstrated through the submission of a financial appraisal alongside a planning application….The Council will also require the applicant to pay for an independent review of the information submitted". This is repeated in the Developer Contributions Supplementary Planning Document.

4. On that basis the Council consider that Ember Estates would have been aware of the requirement to raise viability if disputing the affordable housing contribution and of the requirement to provide a financial appraisal and fund the Council to pay a consultant to independently assess that evidence. Despite having previously submitted a s106 with regard to affordable housing contributions in an earlier planning permission, no undertaking was submitted and no viability assessment was submitted until the appeal stage. The Council wish to reclaim the costs of the independent consultants (DSP) review of Ember Estates financial viability case.

5. In this particular case Ember Estates relied on government guidance regarding whether affordable housing contributions should be required at all from a small site. Ember Estates did not agree that there was a justification for any

contribution in the light of government guidance. Their argument was about policy (whether it should be paid at all) in the first instance, and not restricted to just viability (how much should be paid). Therefore the issue of requiring contributions from the site was not clearcut and there was a potential conflict with the Council's Policy CS21.

6. Ember Estates provided a financial viability appraisal in the appeal. It was subsequently revised in response to the comments of the Council's independent consultant. Although the Council states it would be entitled to recover the costs of the independent consultant pursuant to their own policy, this does not mean that it is recoverable from Ember Estates on the grounds of unreasonable behaviour. Ember Estates provided a financial viability assessment in the appeal to cover the eventuality that there might be a requirement to make a contribution to affordable housing from a small site and to illustrate their concerns in that regard. That did not constitute unreasonable behaviour on the part of Ember Estates.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For this reason, and having regard to all other matters raised, a partial award of costs is not justified.

S Jones

INSPECTOR