



Costs Decision

Site visit made on 6 November 2017

by S Jones MA DipLP

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

Decision date: 19th February 2018

Costs application in relation to Appeal Ref: APP/K3605/W/17/3181115 1 Kings Road, Walton On Thames KT12 2RA

- 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 Perfect Start Childrens Day Nursery and PreSchool for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for change of use from office (class b1) to children's day nursery (class d1); single storey infill side extension; single storey rear extension; 2 x 1st floor rear extensions; car and cycle parking; siting of external plant on flatroof at first floor level; erection of green coloured chain link fencing and hedgerow around garden area ; and surfacing of garden area.
-

Decision

1. The application for an 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 the Council as local planning authority have acted unreasonably because they did not provide an Appeal Statement to elaborate on their reason for refusal, and their conclusions about the effect of the development did not accord with the response from County Highways and were unsubstantiated.
4. The Officer Report was submitted in the appeal, and it gave an explanation behind the reason for refusal. In the Written Representations procedure, the Council could elect to rely solely on the information sent with the Questionnaire, including its Officer Report. Furthermore, the Council say that generally the appellant's appeal submissions did not raise any further points beyond those covered in the Officers Report, vitiating the need for a further response. I consider that the Councils reliance on its Officer Report was not unreasonable and did not constitute a failure to submit required evidence.
5. I note that the applicant had concerns that paragraph 11 of the Council's response to its costs application included further information regarding their reasons for refusal. However, having made a costs application, the other party is entitled to respond to that in the interests of fairness. This would extend to giving reasons why the application for costs was not justified.

6. Furthermore, the Highway Authority view was not the determining factor in this matter because the local planning authority was entitled to determine the application according to the development plan. The Highway Authority did not object to the development, but their considerations concentrated on any detrimental effect on the transport network. The Highway Authority response acknowledged that there would be a shortage of parking provision, but concluded that this would not create a highway safety danger. The Highway Authority's opinion would not generally be determinative of the application because Elmbridge Council is the local planning authority charged with determining the application, not the Highway Authority. Elmbridge Council had a wider scope, encompassing the development plan and all material considerations relevant to the development.
7. Elmbridge Council considered that Kings Road was a small residential no through road and the development did not comply with Policy DM7, DM9 and other development plan policies applicable to the individual site and its location. In particular, set against those policies, an unacceptable increase in traffic levels, parking and local disturbance would be likely to result from this particular development at this location due to the particular constraints. Based on the facts of the case, I consider that the Council's justification in terms of its development plan policies and the individual site was not unreasonable despite the lack of Highways Authority objection.
8. 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, an award of costs is not justified.

S Jones

INSPECTOR