



Costs Decision

Site visit made on 26 March 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2019

Costs application in relation to Appeal Ref: APP/K3605/W/18/3219358 17 High Pine Close, Weybridge, Surrey KT13 9EB

- 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 David Howe for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a new 3 bedroom single storey dwelling with rooms in the roof space.
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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 planning application, which is the subject of this appeal, was refused on the basis that the applicant had refused to provide an undertaking to make a contribution towards affordable housing.
4. The applicant has stated that the council has acted unreasonably and has failed to comply with the revised National Planning Policy Framework (the Framework). This provided a self-build housing developer with exemption from a contribution towards affordable housing, according to the applicant but, nevertheless, the council continued to apply its policy CS21 of the Elmbridge Core Strategy (2011) on all residential development. In the applicants view, this was hindering the delivery of housing supply in the borough.
5. The applicant goes on to state that the council operates a 'blanket policy of charging', rather than on a case by case basis and has failed to deliver against its targets for affordable housing, presenting misleading information on its actual performance on delivery.
6. In response, the council set out its reasons for refusal of the planning application and the exceptional circumstances which the council faces when trying to meet the need for affordable housing in its area, which it says justifies the policy, the way it is applied to relevant applications and why it does not comply with national planning policy.

7. In the light of the continuing pressure the council faces to deliver affordable housing, it has consistently stated that planning law dictates that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. Therefore, policy CS21 is the starting point and the council acknowledges that it attaches greater weight to its development plan, than the Framework even though it is a material consideration on this matter.
8. The council further contests, that its reasons for continuing to apply its policy CS21 were set out in the various statements since the WMS and the revision of the Framework in 2018 and which in subsequent appeals had been supported in a number, but not all, cases by the Planning Inspectorate, with each being considered on case by case basis.
9. On the substantive issue of whether the council has acted unreasonably during the appeal process, on the basis of the extensive evidence submitted, in my view it has not. Its rationale for continuing to apply the policy seeking contributions from all residential development, even though it acknowledged that it was in conflict with national planning policy, had been reviewed regularly and had been communicated clearly.
10. Concerning the way in which the council applies the policy, in my view, it recognises that not all schemes can afford to make a contribution to affordable housing and that viability may prevent development taking place. On the premise that the council provides a developer an opportunity to present its viability assessment, have it independently assessed and accepts that on a case by case basis contributions can be waived or reduced, it has been satisfactorily demonstrated that the council does not operate a blanket policy of seeking contributions towards affordable housing. Whilst the onus remains with the developer, including a self-builder or someone wishing to commission their own home, it indicates a degree of flexibility by the council and, therefore, it did not act unreasonably in this regard.
11. On the matter of the council providing the applicant with information on which to support its case, whilst some errors had been identified and acknowledged by the council, I am not persuaded these would have had a material impact on the determination of this particular appeal. Based on the council's submissions, I found the information comprehensive and clearly presented.

Conclusion

12. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PGG, has not been demonstrated and therefore no award is made.

Paul Wookey

INSPECTOR