
Costs Decision

Hearing held on 24 July 2019

Site visit made on 24 July 2019 and 1 August 2019

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2019

Costs application in relation to Appeal Ref: APP/L3625/W/18/3209521 241 Station Road North, Merstham RH1 3YU

- 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 Chris Jasper of Bellway Homes (South London) Ltd and SAL Pension Fund Ltd for a full award of costs against Reigate & Banstead Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing buildings and the erection of 33 apartments (including affordable housing), provision of car parking, amenity space and associated infrastructure.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. This application is for a substantive award of costs. It is predicated on the basis that the local planning authority has prevented or delayed development which should clearly be permitted having regard to the development plan, national policy and other material considerations.
4. Planning permission was refused against professional advice. That does not constitute unreasonable behaviour. Members are not bound to accept the recommendations of their officers. An award of costs would only be warranted where the Council cannot produce relevant evidence to show that there were reasonable planning grounds for taking a contrary stance.
5. Although I do not share the view that the proposal would be harmful to the character and appearance of the area and the setting of the Merstham Conservation Area, the Council was able to provide realistic and specific evidence to support its argument that there would be conflict with development plan policy seeking high quality contextual design. It was also able to articulate its concerns in relation to the potential effect of the scheme on the living conditions of the occupiers of The Old Sweet Shop and The Old Post Office. Much like the first issue, this relied upon the exercise of planning judgement.

6. It is not enough in cases such as this to reach a finding on whether there is conflict with individual development plan policies. It is necessary to look at compliance with the development plan taken as a whole, and to have regard to other material considerations. The Council has balanced the benefits against the harm within its evidence, and this exercise takes into consideration the most relevant factors. In my view, the s38(6) duty was discharged correctly.
7. The Council was clearly aware of the fact that the site was allocated for residential development in its emerging Development Management Plan. However, this factor is not decisive. Policy RED2 makes explicit the need for development to have regard to the adjacent conservation area. Furthermore, a site allocation policy does not trump the need to consider whether a scheme would conflict with other development plan policies, in respect of matters such as neighbour living conditions.
8. In any event, the appeal proposal exceeds the number of homes envisaged by Policy RED2 by 10 percent; for the appellant to argue that it is almost identical is stretching a point. Whilst I cannot know for certain, it is quite possible that a re-designed scheme of 30 units would address the Council's concerns and meet the policy requirements.
9. I appreciate that there was pre-application engagement with the local planning authority. Whilst this weighs in the appellant's favour, it does not mean that the Planning Committee cannot arrive at a decision contrary to the officer recommendation. The Council has been able to support its decision with evidence and therefore the deviance from what was agreed during informal discussions with officers does not form a sound basis on which to award costs.
10. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated and an award of costs is not justified. For the reasons given above, I refuse the application for an award of costs.

Robert Parker

INSPECTOR