Costs Decisions

Hearing Held on 4 September 2019

Site visit made on 4 and 5 September 2019

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 4th November 2019

Costs application in relation to Appeal A Ref: APP/Z5630/W/18/3218944
Norbiton Hall, Birkenhead Avenue, Kingston upon Thames

- 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 Park City Ltd for a partial award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
- The hearing was in connection with an appeal against the refusal of the Council to grant subject to conditions planning permission for the conversion of existing roof void within Blocks A, B and C to provide 18 no. residential dwellings, comprising 12 no. one bedroom units and 6 no. two bedroom units, together with individual rear dormer windows and inset roof terraces, associated cycle parking and landscaping.

Costs application in relation to Appeal B Ref: APP/Z5630/W/18/3218946
Norbiton Hall, Birkenhead Avenue, Kingston upon Thames

- 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 Park City Ltd for a partial award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
- The hearing was in connection with an appeal against the refusal of the Council to grant subject to conditions planning permission for the conversion of existing roof void within Blocks A, B and C to provide 18 no. residential dwellings, comprising 12 no. one bedroom units and 6 no. two bedroom units, together with front and rear dormer windows and inset roof terraces, associated cycle parking and landscaping.

Decision

1. Both applications for awards of costs applications in respect of Appeals A and B are refused.

Reasons

2. The application was made orally at the end of the hearing. The applicants' agent reading from a pre-prepared written statement. The Council made a verbal response.

3. The schemes are very similar in that they relate to the same number of dwellings however have different detailing in respect of the number and positioning of roof openings. The matters pursued in relation to both costs claim are the same and apply to each scheme equally. I have dealt with them on that basis.

4. The applicants contend that the Council has behaved unreasonably by: a) failing to agree Gross Internal Areas (GIAs) and by failing to accept the corrected drawings during both the planning applications and the appeals; b) unwillingness to engage in a productive discussion, agree common ground or enter into a legal agreement relating to the reasons for refusal relating to parking; c) unwillingness to engage in a productive discussion, agree common ground or enter into a legal agreement relating to viability and appropriate affordable housing contributions in advance of the appeal. Furthermore, the applicants consider that time at the hearing has been wasted on matters that should have been common ground. I shall deal with these matters in turn.

5. Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary expense in the appeal process. It is an accepted principle that parties in planning appeals normally meet their own expenses.

6. The applicants argued that their changes in annotation represented on the amended plans resulted from an unintentional error. The Council clarified that the amended details had been considered by them and that the omission of the drawing numbers from the decision notice was an administrative error. The applicant’s assessment of compliance with technical standards was based on revised details rather than the original submission and this led to interpretations of significant difference between the parties. Nonetheless the applicant’s stated during discussion that their scheme did not fulfil the technical standards[1] and the matter was subject to lengthy discussion at the hearing; given this context it was reasonable for the Council to pursue this matter and such pursuit did not constitute unreasonable behaviour.

7. The applicants argued that the Council failed to engage in productive discussion regarding parking and was unwilling to enter into a Section 106 agreement, furthermore the Council highlighted that a restriction on parking provision could not be achieved by way of a condition and a bi lateral agreement would be needed to effect other methods of parking restrictions. In contrast the applicants had proposed a development with nil parking which, although in an area with a high Public transport accessibility level (PTAL) was also in an area of high demand for spaces and their statement of case advanced a draft unilateral agreement to restrict future residents from applying for parking permits; a position which changed immediately prior to the hearing.

8. It was contradictory for the Council to suggest planning conditions when their statement of case outlined that to restrict the ability to apply for permits conflicted with highlighted case law. Nonetheless I am mindful that the parties did agree a statement of common ground which also clarified the areas of dispute, this was not damaging to either parties’ case but set out matters to be explored further. It was not incumbent on the Council to agree a position when there were areas of disagreement and conflict with policy. These circumstances do not demonstrate unreasonable behaviour and it was reasonable for the Council to pursue this matter.

9. The applicants’ position on affordable housing was such that during the planning application and in their statement of case the proposal was not

[1] Technical housing standards – nationally described space standards March 2015 Department of Communities and Local Government

sufficiently viable to enable the payment of an affordable housing contribution. The applicants argue that the Councils unwillingness to discuss viability or to re-appoint their own consultants to advise was unreasonable. The Council outlined that there remained conflict with the development plan and that the viability analysis was flawed.

10. Notwithstanding the above positions it was clear to me that the applicants' position was that the scheme could not support any affordable housing contribution, and this was the basis that the Council and I prepared for the hearing. Even though the applicants had stated an intention to submit a revised position in late August the position did not actually change until the submission of a Unilateral Undertaking (UU) the day before the hearing at which point a modest sum towards affordable housing provision was offered. That agreement was criticised by the Council at the hearing for being legally flawed and unenforceable and lacking the signatories of leaseholders of the building. In this context and given the policy context and the late change of position in regard to affordable housing contributions I consider that the Council did not act unreasonably in this matter.

11. Any application for costs needs to clearly demonstrate the basis for alleged unreasonable behaviour and how this resulted in unnecessary or wasted expense in the appeal process. The costs claim does not make it clear the extent of unnecessary or wasted expense to which the applicant has been put. In any event I have not found the Council's behaviour regarding this decision unreasonable.

Conclusion

12. I therefore conclude that, unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated, and awards of costs have not been justified in relation to either Appeal A or Appeal B. Therefore, both claims for costs fail.

Janet Wilson

INSPECTOR