
Costs Decisions

Site visit made on 15 October 2019

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2020

Costs application A in relation to Appeal Ref: APP/K3605/W/19/3233525 18 Springfield Lane, Weybridge KT13 8AW

- 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 Steen, Birchwood Homes Ltd. for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for an outline application for detached four-storey building containing 20 flats with associated parking, cycle and bin stores following demolition of existing building (for access, appearance, layout and scale).
-

Costs application B in relation to Appeal Ref: APP/K3605/W/19/3233516 18 Springfield Lane, Weybridge KT13 8AW

- 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 Steen, Birchwood Homes Ltd. for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for the erection of detached five storey building containing 22 apartments following demolition of the existing working mens club along with associated parking, cycle store and bin store.
-

Costs application C in relation to Appeal Ref: APP/K3605/W/19/3233525 18 Springfield Lane, Weybridge KT13 8AW

- 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 Mr David Steen, Birchwood Homes Ltd.
 - The appeal was against the refusal of planning permission for an outline application for detached four-storey building containing 20 flats with associated parking, cycle and bin stores following demolition of existing building (for access, appearance, layout and scale).
-

Decisions

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.
3. Application C for an award of costs is refused.

Reasons

4. 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.

Application A

5. The application for costs relies on substantive matters relating to the planning merits of the appeal. The applicant cites that the scheme should have been determined having regard to the development plan, national policy and other material considerations. It is further cited that in respect of character and appearance, the planning officer and the conservation officer advised the committee that the scheme would be acceptable and did not identify any harm. There is also reference to what is purported to be a development of similar bulk, scale and design in the vicinity which had recently been approved.
6. It is contended that in terms of parking, the committee considered the proposal inconsistently with the other development in the vicinity that was approved recently. In respect of the issue of a legal agreement, the applicant comments that a viability assessment would have been submitted within 3 months of any resolution to approve the application, which would demonstrate that the scheme was not sufficiently viable to support an affordable housing contribution.
7. The committee considered that despite the recommendation from officers, the scheme would result in harm to the character and appearance of the area and provided inadequate on-site parking. These are inherently subjective matters and matters of planning judgement. Members of the committee would have local knowledge of the area and notwithstanding the content of the officer's recommendation, concluded that the proposed scheme would have an unacceptable effect in respect of both of these issues. This view is clearly articulated in the reasons for refusal as well as the Council's statement of case.
8. Turning to the matter of the legal agreement, the officers recommendation to committee sets out that there would be a requirement to provide affordable housing and that, whilst the applicant had indicated a willingness to enter into a legal agreement, no evidence had been submitted at that stage to demonstrate that the scheme would be unviable with the required provision.
9. Whilst the application was not recommended for refusal on this basis and recommended a 3 month period to complete a legal agreement if permission was to be forthcoming, given that Members determined to refuse the application, I do not consider that it was unreasonable for the lack of a legal agreement to be cited as a reason for refusal. The inclusion of this matter within the decision notice clearly sets out all of the reasons which the Council considered justified the refusal of permission.
10. The decision taken on the application was based on the judgement of the members of the committee, utilising local knowledge of the area. Whilst the recommendation from officers was to approve the planning application and that I have found differently to Members, they were not bound to accept the recommendation, so long as reasonable grounds for doing so could be substantiated, which in my view, have been.

11. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Application B

12. The application for costs relies on substantive matters relating to the planning merits of the appeal. The appellant cites that the change in Appeal Scheme B, over that of the smaller proposal within Appeal Scheme A would not change the views from adjacent public areas a great deal. Furthermore, as a result of the committee determining that a four-storey development was unacceptable, officers were bound to find the five-storey development unacceptable also. The appellant cites the same reasoning in respect of parking, i.e. that if the committee determined that there was an unacceptable deficit in respect of parking, a scheme with a greater deficit would similarly be unacceptable.
13. In respect of the affordable housing reason for refusal, the appellant states that the scheme was not sufficiently viable to support the level of affordable housing that was expected by the Council. However, it is also accepted that viability figures were not before the Council at the time of the refusal.
14. When determining the planning application under delegated powers, the officers rightly had regard to the views expressed by the committee in determining the separate application on the site, both in respect of the issues of character and appearance, as well as parking. I do not consider that having regard to these matters and determining the application accordingly demonstrates unreasonable behaviour on the part of the Council. Rather, it would indicate a level of consistency in decision making.
15. Similarly, in respect of affordable housing, there was no information before the Council in respect of viability and given that the application was being refused for other reasons, I do not consider that including this matter as a reason for refusal is unreasonable.
16. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Application C

17. The application for costs relies on procedural matters relating to the process of the appeal. The Council cites that the appellant submitted evidence late in the appeal, in respect of financial viability information which should have been submitted at application stage, and as a result it has incurred unnecessary or wasted expense.
18. Whilst I note that all of the viability information was submitted with the appeal, I am also conscious that the recommendation to the committee included provision, should planning permission be granted, for a 3-month period within which a legal agreement would be completed. This period would have allowed for negotiation on the matters which were to be subject of the legal agreement. This would have, in my view, undoubtedly included finalising the contribution, if any, that would be secured. As such, no matter when the viability information was submitted, either with the planning application or with the appeal, it would

have necessitated an assessment of viability which the Council would have wished to scrutinise.

19. I note that there was some disagreement over the viability of the scheme, however I am also conscious that the positions as set out were the professional opinions of the parties conducting the viability assessments for each main party. Following discussion, it appears that the majority of these issues were resolved. As such, this does not lead me to conclude that the position adopted initially by the appellant was unreasonable.
20. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Martin Allen

INSPECTOR