
Costs Decision

Site visit made on 16 December 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2020

Costs application in relation to Appeal Ref: APP/K3605/W/19/3237701 37 Molesey Road, Hersham KT12 4RN

- 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 Jackson for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for a new 2-bedroom dwelling with associated parking and refuse storage.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 applicant submits that the Council has acted unreasonably in that it has gone against the advice of its professional officers and refused planning permission on grounds that lack clarity and make unsupported assertions about the effects of the proposal. Furthermore, it is their contention that the Council's Sub-Committee failed to consider all material planning considerations and had they done so, the proposal would have been permitted, without the necessity of an appeal which has caused the applicant unnecessary expense. The applicant also considers that the Sub-Committee did not approach the application with an open mind.
4. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. The Council's decision includes two reasons for refusal. The issues raised are interrelated as they raise matters relevant to the character and appearance of the site and its surroundings. It can be seen from my decision that I determined the appeal on this basis.
5. In respect of the Council's first reason for refusal, the applicant has referred to the minutes of the Sub-Committee meeting, which suggest that the proposal would be out of keeping with the surrounding area. My assessment of the effects on the character of the area is consistent with the approach taken by previous Inspectors. As such, the Council's Sub-Committee were also entitled

- to come to a different conclusion to professional officers, based on their own assessment of the proposal in its context, with the knowledge of previous decisions.
6. The applicant also suggests that the Sub-Committee has interpreted its own policy guidance in the SPD incorrectly in respect of the requirement for a front garden. While there is no specific requirement in the policies referenced, to my mind, the reference to front gardens should be read in the context of the remainder of the text. This describes what the Council perceive to be the effects of the proposed development on the character of the area. Therefore, I consider that the reason for the refusal on the decision notice is complete, precise, specific and relevant to the application and clearly states the policies that the proposal would conflict with.
 7. In my decision I considered the character of the site and its surroundings to be distinguishable from the Hersham Place Technology Park to the north, the new dwelling at 29 Molesey Road and the examples of development scenarios referred to within the Council's SPD. The Council's Sub-Committee were therefore also legitimately within their rights to arrive at a similar conclusion, as they were regarding their approach to development elsewhere and whether this would be appropriate in the Borough. Consequently, in my decision I found that there were sufficient grounds for refusing planning permission related solely to the harm to character alone. I am therefore satisfied that the Council acted reasonably in refusing the appeal proposal on this basis and it was able to substantiate its first reason for refusal.
 8. As a result, it follows that I cannot agree that the Council has acted unreasonably in respect of the first reason for refusal or the discussion referred to in the minutes of the Sub-Committee Meeting.
 9. In respect of the Council's second reason for refusal, the applicant refers to the use of the phrase 'sensitive location' as being unreasonable. It can be seen from my decision that I have arrived at a similar conclusion, as the site is not within or adjacent to any designated heritage assets and the area is also not designated locally. Moreover, the Companion Guide to the Council's SPD for Hersham is primarily used to identify the character of the settlement.
 10. While the Council advise that members of the Sub-Committee undertook a site visit to assess and fully understand the implications of the proposal, the reason for refusal appears to suggest that they did not have sufficient regard to the new house at No 29, as a material planning consideration. In particular, the scale of that house in relation to its plot. Had they taken this into account, in the same manner as their officers, then it is likely that they would have reached a similar conclusion, that the proposal would not result in a dominant or cramped form of development that would offend the appearance of the area.
 11. In the planning judgement, it appears to me that, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should not have been refused permission on the grounds advanced in the second reason for refusal. The refusal of planning permission by advancing incorrect assertions about the proposal's impact and importance of the immediate context, therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG.

12. In light of this, the aspect of the appeal relating to the second reason for refusal was unnecessary and the preparation of evidence to support the appeal in this respect is likely to have led to unnecessary expense.
13. Turning to the other matters raised by the applicant, the PPG suggests that the behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. There is no substantive evidence before me that would suggest that the Council's Sub-Committee did not have an open mind in considering the proposal, its positive benefits or updated information received at the Meeting. Similarly, the reasons for refusal do not reference the term 'amenity' or the effect of the proposal upon future occupiers. Moreover, I have identified that they relate solely to the character and appearance of the site and its surroundings. As such, I am satisfied that the Council has not exhibited unreasonable behaviour and the applicant has not been put to any wasted expense defending the appeal in respect of these matters.
14. Despite my findings in relation to the Council's first reason for refusal and the other matters referred to above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of the Council's second reason for refusal. A partial award of costs is therefore justified.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Elmbridge Borough Council shall pay to Mr David Jackson, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal.
16. The applicant is now invited to submit to Elmbridge Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, the costs shall be assessed by the Senior Courts Costs Office.

Paul Thompson

INSPECTOR