



Costs Decision

Site visit made on 11 February 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 February 2020

Costs application in relation to Appeal Ref: APP/Z5630/W/19/3240569 2 Hailsham Close, Surbiton KT6 6QD

- 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 Pedros Capital Limited for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
 - The appeal was against the refusal of planning permission for the reconfiguration of existing dwelling and erection of two storey adjoining building to provide 2x3 and 1x2 bedroom dwellings with associated private amenity space, landscaping and car parking.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal or vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant states that although he had engaged with the Council prior to submission of the planning application and had accommodated amendments to the scheme during the processing of the application, the appeal was unnecessary as the proposal complies with the local development plan. It is also claimed that the resolution of the planning committee was not accurately reflected in the Decision Notice (the Notice) and that it contained the incorrect description of the revised development proposals. It is also alleged that the Council failed to take account of the presumption in favour of sustainable development as set out in Paragraph 11 of the National Planning Policy Framework (the Framework) when reaching its decision.
5. In this case the Council's officer had recommended the application for approval. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate

- why a proposal is unacceptable on planning grounds and provide clear evidence to substantiate that reasoning.
6. However, after some delay in issuing the Notice, errors were included within it. As claimed, the Notice referred to the original description of development rather than the agreed amended description. Additionally, it included unqualified reference to Policy CS3 of the Royal Borough of Kingston upon Thames Local Development Framework Core Strategy (2012).
 7. Furthermore, I find that the stated reason for refusal lacked the clarity and precision required by Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to sufficiently explain the Council's decision. The scope of the reason for refusal is unclear particularly in regard to how the development would affect the way the area functions or be injurious to the residential amenity of the neighbouring residents. The Council has since clarified these matters in its Statement of Case (SoC).
 8. Notwithstanding the above, the Council has subsequently failed to demonstrate with any clear evidence how the design aspects of the development are contrary to the development plan within its SoC. It also introduced additional aspects of design that were not specified in the reason for refusal, for example, its siting, its effect on a local building line and its roof form. In providing only generalised assertions, the SoC failed to provide evidence to substantiate the reason for refusal with respect to its design.
 9. The reference to impacts on the residential amenity of neighbouring occupiers is clarified in the SoC as those arising from the visual impacts of the development. In this regard, I acknowledge that there is disagreement between the parties as to the events which took place at the meeting of the Surbiton Neighbourhood Committee on 29 September 2019 and the subsequent representation of the resolution of the Committee within the Council's Notice. However, notwithstanding the various views expressed and the minute of the meeting provided, there is no conclusive evidence as to unreasonable or inappropriate behaviour taking place at the time of the Committee meeting or in the subsequent issue of the Notice. Nevertheless, the Notice failed to specify the context of the residential amenity impact and, as above, is not supported by evidence or objective analysis in the Council's SoC.
 10. Furthermore, if the parking concerns expressed in the Council's SoC were the issue giving rise to harm to the way the area functions, this was also unclear in the Notice. Whilst it was not unreasonable to raise concerns as to the accessibility for vehicles to serve the development, the subsequent failure within the evidence to support any adverse impact that might arise from that aspect of the development, to establish that there is an existing parking problem, and if so, demonstrate how this would be made worse on highway safety grounds, leaves it unsubstantiated.
 11. The appellant has also taken issue with the Council's decision making in the context of the lack of five-year housing land supply within the Borough. Although the parties agree that the presumption in favour of sustainable development described in paragraph 11 of the Framework is engaged, it is a matter of planning balance and judgement as to whether that presumption would outweigh any harm arising from the development when assessed against the policies of the Framework taken as a whole. In finding against the

development, the Council subsequently failed to reference the requirement of the Framework in this respect within its SoC.

12. Taking all of the above matters into consideration, the unsubstantiated refusal of planning permission constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
13. For the above reasons an award of costs is justified.

Costs Order

14. 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 the Council of the Royal Borough of Kingston-upon-Thames shall pay to Pedros Capital Limited the costs of the appeal proceedings described in the heading of this decision.
15. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR