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## Costs Decision

Site visit made on 8 January 2020

**by Rory MacLeod BA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 April 2020**

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### **Costs application in relation to Appeal Ref: APP/K3605/W/19/3239389 1 Red House Lane, Walton-on-Thames, Surrey KT12 1EF**

- 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 Mrs Vivienne Holmes for a full award of costs against Elmbridge Borough Council.
  - The appeal was against the refusal of planning permission for 3 new dwellings following the demolition of an existing dwelling, along with associated access, hard standing and landscaping.
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, 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. In this case, the refusal of planning permission by the Council's Area Planning Sub-Committee was contrary to an officer recommendation on the application to grant permission. Whilst elected members are not obliged to follow their officers' advice, PPG indicates that local planning authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal. In this case, there is one refusal reason relating to an alleged harmful appearance to the development.
4. The applicant's claim is based around three broad issues: (1) that members did not pay sufficient regard to the pre-application submission or the benefits of the scheme, (2) that the Council has not substantiated its reason for refusing the application and (3) delays in processing the application.
5. The officer report to the Committee clearly states at paragraph 16 that the proposal follows the seeking of pre-application advice in which the applicant was informed that a scheme for three houses would likely receive Officer support. Paragraph 25 of the report confirms that the Council does not have a 5 year housing land supply and that the scale of the houses is justified by a viability report. It is clear that members were informed of the benefits of the scheme in the report and that there was a recommendation to grant planning permission in accordance with expectations from the pre-application submission.

6. Minutes of Committee meetings are primarily to record decisions taken. The minute of the meeting on 12 August 2019 also provides a high level comment to confirm that "*The Sub-Committee discussed the application in detail*" and that "*the modern design of the development*" was the main concern. Whilst the minute does not make explicit reference to the titled balance required by Paragraph 11d of the National Planning Policy Framework being engaged if the proposal is to be considered for refusal of permission, planning officers and members would have been aware of this ongoing requirement given that the Council cannot demonstrate a 5 year housing land supply. I am satisfied that members were mindful of the pre-application submission and of the benefits of the scheme in their consideration of whether the officer recommendation should be overturned.
7. Substantiation of members' concerns is set out in the Council's appeal statement. It is brief compared with the assessment in the officer report, but it does identify the alleged harm and references this to adopted planning policies. The issue of concern is a matter of judgement. The applicant concedes that "design is naturally subjective". It will be evident from the main decision that I have not agreed with members' assessment but that does not mean that their case has not been substantiated. The statement also refers to members visiting the site prior to their meeting, which would have provided a fuller understanding of the proposal's impacts in relation to the character and appearance of the area. The appellant refers to contacting members prior to their meeting and queries whether design concerns could have been raised earlier. But members would not have been able to provide a considered and collective view prior to the deliberations at their meeting.
8. It is evident from the application's timescale of over a year and from information submitted in relation to the events that occurred during this time that there were delays in processing the application. However, PPG states that, "*costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission*"<sup>1</sup>. I sympathise with the frustration on delays in the application process, but there is no evidence that the Council's behaviour has caused delays at the appeal stage.
9. The applicant has referred to a costs decision in Central Bedfordshire<sup>2</sup> to support the claim. However, the circumstances in that case differ from the current appeal in that the award related to changes in the officer opinion leading to wasted expense. In this case, officer opinion has been consistent in the process and in accordance with pre-application advice.

## Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

*Rory MacLeod*

INSPECTOR

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<sup>1</sup> Planning Practice Guidance Paragraph: 032 Reference ID: 16-032-20140306

<sup>2</sup> Appeal Ref: APP/P0240/W/18/3210480, Former Shefford Lower School, land off Wynchwood Lane, Shefford SG17 5XA.