



Costs Decision

Hearing Held on 29 January 2020

Site visit made on 29 January 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Costs application in relation to Appeal Ref: APP/K3605/W/19/3237800 St Catherines, Thames Street, Weybridge KT13 8JR

- 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 PA Housing for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for demolition of all existing buildings; erection of part two-, part three-storey building comprising 28 residential dwellings (9 x 1 bed, 13 x 2 bed and 6 x 3 bed units); formation of new highway access; creation of 28 no. car parking spaces, ancillary cycle store, new tree planting and landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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's application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense, for procedural and substantive reasons, as considered below.
4. In respect of procedural matters, following pre-application discussions and formal submission, the applicant's planning application was recommended for approval by the Council's Special Projects Officer, subject to the receipt of a satisfactory legal agreement securing the on-site affordable housing contribution and conditions. However, the South Area Town Planning Sub-Committee (Sub-Committee) at its meeting on the 20 May 2019 resolved to refuse the application contrary to the officers' recommendation based on 3 reasons, as set out in the Planning Committee minutes: St Catherines Thames Street Weybridge Surrey Application Reference 2019/0386.
5. Subsequently, the application was referred back to the Sub-Committee to its meeting of 17 June 2019, as it had failed to attach a reason for refusal relating to the lack of affordable housing provision, along with a recommendation to refuse planning permission. The applicant also provided a letter for members of Sub-Committee, advising that as a Registered Provider it was committed to providing the affordable housing units as part of the development in line with

- the Council's requirements. Adding that the applicant's solicitors had drafted a Unilateral Undertaking in consultation with Council's legal services to secure the affordable housing.
6. Nevertheless, at its meeting on 17 June 2019, members of the Sub-Committee, following the advice of the Special Projects Officer agreed to include a further reason for refusal relating to the lack of affordable housing provision.
 7. Furthermore, the Special Projects Officer provided an update on the verbal advice received from the Highway Authority regarding the layout of the access and parking area on the development site, which had been included in the original reasons for refusal of the application at the Sub-Committee meeting on 20 May 2019. Given that there were concerns as to whether this reason was sufficiently robust, the Special Projects Officer sought a formal view from the Sub-Committee as to whether it wished to continue with this reason for refusal. In light of the update and having considered the information provided by the Special Projects Officer, the Sub-Committee supported the removal of this particular reason for refusal. Consequently, the application was refused for the 3 reasons, as set out in the Council's decision notice.
 8. In this case, the Council cannot demonstrate a five-year supply of deliverable housing sites. Accordingly, the National Planning Policy Framework ('the Framework') requires the granting of permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole ('the tilted balance').
 9. Notwithstanding the circumstances in which the decision was made, and the subsequent application of the tilted balance in its Statement of Case (SoC), the Council concedes that the tilted balance was not applied in determining the applicant's planning application. Therefore, having regard to the PPG¹ the Council acted unreasonably in failing to correctly apply national policy without any apparent justification at that stage.
 10. Furthermore, the applicant argues that the members of the Sub-Committee failed to consider other factors. One of these is the fallback position. This relates to the appeal site having an unrestricted residential use accommodating 26 residential dwellings within use Class C3.
 11. On the other hand, in applying the Technical housing standards – nationally described space standards the Council argues that the existing accommodation, as currently laid out does not meet these standards. Further, that the internal layout of the existing building would have to be substantially altered to offer the minimum quality standard accommodation acceptable for its potential future occupiers. Irrespective, given its unrestricted Class C3 consent, planning permission would not be required for its use as 26 one and two-bedroom flats. Consequently, the stance taken by the Council in respect of the fallback was incorrect.
 12. The Council's officer reports presented to the Sub-Committee on the applicant's planning application advise that formal pre-application advice had been provided and that the submission of an application was encouraged. As such, members would have been mindful of the pre-application advice.

¹ Paragraph: 050 Reference ID: 16-050-20140306

Notwithstanding this, Council members are not obliged to follow their officers' lead such that the decision of Sub-Committee to go against a scheme based on the pre-application advice provided by its professional officers is not unreasonable.

13. There is no specific requirement on how Council's should set out consultee responses within reports and in my experience, this can vary between Councils. In this case, the integration of the listed building officer's views within the report demonstrates one such approach. Therefore, I do not consider that the views of that particular officer were either deliberately withheld or that the significance of them was not noted in the context of the proposal. Consequently, this does not demonstrate an unreasonable approach.
14. Turning to the applicant's substantive grounds of appeal. The Council's Sub-Committee went against the advice of the Council's professional officers. Planning Committees are not bound by a professional recommendation and are entitled to depart from this based on the facts of the case and planning judgment. However, this is not an unqualified right, as members of a planning committee must be able to properly substantiate any concerns identified.
15. The first reason for refusal alleges that the height and massing of the proposed development would be out of keeping with the character of the surrounding area. This is considered under paragraphs 3.1 – 3.8 of the Council's SoC. In summary, the Council acknowledges that the surrounding area of the appeal site is not represented by a consistent townscape character and has no prevailing architectural style. Nonetheless, on the basis of objective analysis based on an assessment of the site and its setting, which is consistent with the advice in the Council's Design and Character Supplementary Planning Document, and as advocated in the Framework, the Council concluded that the substantially increased height, along with a much greater massing and scale in comparison with the building to be replaced and adjacent properties, the appeal scheme would fail to integrate with the surrounding area in a satisfactory manner to preserve or enhance the character of the area.
16. The above reason for refusal is also supported by reference to Policy DM2 of the Development Management Plan of 2015 (DM) which amongst other things requires that the proposal shall have particular regard to the scale, mass and height in order to preserve the character of the area. Further, Policy CS17 of the Elmbridge Core Strategy of 2011 amongst other matters requires that new development integrates sensitively with the locally distinctive townscape.
17. The second reason for refusal relates to landscaping. Under paragraphs 4.1 to 4.8 of its SoC, the Council provides an assessment of the existing green landscape, which includes identifying its positive contribution to the visual amenities of the surrounding area. The Council adds that the proposal would result in an overall reduction of soft landscaping at the site and that this, relative to the extent of the proposed development and associated landscaping would result in a detrimental visual impact in the immediate surrounding area, adversely affecting the visual amenities of the neighbouring residents. Concluding that the appeal proposal fails to enhance, and integrate into, its surroundings.
18. Along with the loss of grass verges, the Council is also concerned about the removal of two trees on the site, a Norway Maple (T6) and Copper Beech (T7). These are not protected and could be removed. There are also some limitations

to the longevity of these trees. Nevertheless, the appellant's Arboricultural Report identifies that these trees make a medium to high landscape contribution.

19. The appeal site is not identified in the Council's Local Green Space Designation Study (September 2016) the purpose of which was to identify all high-quality green spaces within the Borough that have a positive impact on the urban environment. Nonetheless, the supporting text to Policy DM6 of the DM, recognises tree-lined roads and verges as green landscapes which have important environmental and biodiversity value as well as playing an essential role in the landscape character of the area. Although this Policy requires development proposals to be designed to include an integral scheme of landscaping, it also seeks to conserve existing landscaping.
20. Based on the foregoing reasons and given that the trees and grass verges are present and form part of the appeal site, members were entitled to take these into account in relation to the proposal.
21. The members' consideration of the effects of the proposed development on character and appearance are also matters of planning judgement. This involves some subjective analysis having regard to the context of the site, the proposal and the development plan and any other material considerations. Furthermore, members of the Sub-Committee would have local knowledge of the site and area, had visited the site as part of determining the planning application and also undertook discussions about the proposal at two separate meetings.
22. In respect of Reason 3, despite the applicant's apparent best intentions to provide a completed legal agreement to secure the required affordable housing provision, this was not available on the occasion the application was refused by the Sub-Committee. In fact, the completed legal agreement was submitted just prior to the Hearing, and duly the Council confirmed that it would not be pursuing this particular reason for refusal.
23. Consequently, the reasons for refusal set out in the Council's decision notice are complete, precise, specific and relevant to the application. These also refer to relevant development plan policies. Furthermore, the Council's conclusions about the impact of the proposal are clear and supported by sufficient analysis.
24. In light of the above, and having taken account of the applicant's evidence, including its pre-application discussions with the Council, and despite finding in favour of the applicant's appeal, I am satisfied that the reasons provided by members of Sub-Committee to refuse the application albeit contrary to officers' professional advice were based on reasonable planning grounds.
25. Nevertheless, the Council acted unreasonably with regard to incorrect stance in respect of the fallback, and by failing to correctly apply national policy (the tilted balance). However, to make an award of costs I need to be satisfied that these matters resulted in unnecessary or wasted expense in the appeal process.
26. Irrespective of the stance taken by the Council in respect of the fallback, its final reasons for refusal of the applicant's planning application specifically relate to the alleged effects arising from the proposed scheme (Reasons 1 and 2) and the lack of affordable housing provision (Reason 3). Therefore, while I cannot

be certain, it seems more unlikely than likely that the correct interpretation of the applicant's fallback would not have made any difference to the Sub-Committee's decision to refuse the planning application.

27. Similarly, although the Sub-Committee did not apply the tilted balance when determining the applicant's planning application, the fact that in its appeal evidence it acknowledges this shortcoming, yet maintained its case in respect to Refusal Reasons 1 and 2, suggests that having applied the tilted balance the Council considered that planning permission should still be refused, such that it seems most likely that the application would have been refused by the Sub-Committee had the correct balance been applied.
28. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal
INSPECTOR