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## Costs Decision

Site visit made on 2 September 2020

**by S Dean MA MRTPI**

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

**Decision date: 14 September 2020**

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### **Costs application in relation to Appeal Ref: APP/K3605/W/20/3247061 Land to the south of Halfpenny Cottage, West End Lane, Esher KT10 8LF**

- 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 Rachel Gee for an award of costs against Elmbridge Borough Council.
  - The appeal was against the refusal of planning permission for development described as "New build two storey detached house".
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (the PPG) sets out that parties in planning appeals are expected to behave reasonably. It goes on to say that where a party has behaved unreasonably, and that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The PPG sets out examples of behaviour which may give rise to an award of costs against the Council.
3. The applicant suggests that the Council has behaved unreasonably, by determining similar applications differently, with specific reference to another residential development nearby. The applicant also suggests that failing to mention this in the Officer Report or Decision Notice was unreasonable.
4. To my mind, there are clear differences between the example cited, which used an existing access, and the appeal scheme which, setting aside the issues around rights discussed in the main decision, required the creation of a new vehicular access. Furthermore, the Council did then address this point in their response to the appeal.
5. The applicant has also claimed that the Council has failed to substantiate their reasons for refusal, failed to take into account previous developments and failed to take into account their wider responsibilities towards highway and verge maintenance.
6. In light of the particular nature of the appeal proposal and its effects, as discussed in the main decision, I consider that in determining the application, the Council has appropriately distinguished between its various roles and responsibilities, maintaining the proper separation between its functions as planning authority and landowner.
7. In responding to the Council's response, the applicant has introduced further grounds which they consider represent unreasonable behaviour, namely that

the application has been unreasonably prevented or delayed, as concerns could be dealt with by condition. As I have set out in the main decision, I do not consider this to be the case. Similarly, as this matter was fundamental to the acceptability of the proposal, I do not consider that the Council was unreasonable in taking the approach that they did.

8. The applicant has also further suggested that the Council has been unreasonable by failing to substantiate their reason for refusal. I cannot agree with this claim. In my opinion, both the Officer Report and Appeal Statement do clearly and thoroughly explain and support the reason for refusal.

### **Conclusion**

9. I therefore find that the Council has not demonstrated any behaviour which could be considered unreasonable in the terms of the PPG, and which then resulted in unnecessary or wasted expense on the part of the applicant.
10. The application for an award of costs is therefore refused.

*S Dean*

INSPECTOR