
Costs Decision

Site visit made on 9 November 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2020

Costs application in relation to Appeal Ref: APP/K3605/W/20/3254951 9 Leigh Court Close, Cobham KT11 2HT

- 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 Mumford of Rushmon Homes for a partial award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for construction of 5 no. apartments with basement parking.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. Planning permission was refused against professional advice. This in itself does not constitute unreasonable behaviour. Members are not bound to accept the recommendations of their officers. An award of costs would only be warranted where the Council cannot produce relevant evidence to show that there were reasonable planning grounds for taking a contrary view.
4. Permission was refused partly on the grounds that the proposal would not respect the prevailing pattern of built development in Leigh Court Close. The concern stems from the Committee's observation that there are no other flats in the road. However, there is no explanation as to why this would cause material harm to the character of the area. The development would have the same building envelope as the extant permission for a replacement dwelling and it would retain the outward appearance of a single large dwelling. The Council does not object to the design and states within published guidance that smaller units and higher densities do not detrimentally affect the character of an area. In light of this, I remain wholly unclear as to the nature of the alleged harm.
5. The Committee appraised itself with a site visit prior to making its decision. It was aware of the County Highway Authority advice that the scheme would be likely to generate between 1 and 2 extra vehicle movements during peak hours. Members should also have been familiar with the content of the submitted Transport Statement. The Council provides no assessment its own and makes no attempt to rebut the technical analysis presented by the applicant or its own

- highway consultee. Furthermore, there is no explanation as to why such a modest – some might say imperceptible – increase in vehicle movements would be materially harmful to highway safety and residents' amenities.
6. The planning application was accompanied by swept path assessments which demonstrate that the basement parking would operate satisfactorily. The Council does not dispute the assessments but contends that there would be 'no room for error' when entering or exiting spaces in the car park as the spaces would be 'very tight'. The concern appears to be based on the assumption that residents of the apartments would be likely to own SUVs. Nevertheless, it is clear from the evidence that the basement parking would meet relevant standards. A plan was provided to the Committee which showed how the layout could be adjusted to accord with an emerging Parking Supplementary Planning Document.
 7. The Council acknowledges that the viability appraisal demonstrates that the development is not capable of making any affordable housing provision as it would not be viable. Sensitivity testing indicates that the scheme would produce a deficit, even assuming lower developer returns of 15% of Gross Development Value. Yet the Council persists in seeking a contribution towards affordable housing without any explanation. The failure to provide any convincing evidence to justify why the authority is taking a different position to its own specialist viability advisors constitutes unreasonable behaviour.
 8. The PPG explains that local planning authorities are at risk of an award of costs where they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. They are also vulnerable to an award where they rely on vague, generalised or inaccurate assertions about a proposal's impact. These circumstances apply here; the Council has failed to produce substantive evidence to explain its concerns and counter technical analysis provided by the appellant and the authority's own consultees and advisors.
 9. I note that the Committee was advised that the 'tilted balance' within the National Planning Policy Framework was not engaged on the basis that Core Strategy Policies CS17 and CS19 were up-to-date. Footnote 7 on page 6 of the Framework indicates that the provisions of paragraph 11(d) are triggered in situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Had the Committee been correctly advised it may have arrived at a different decision.
 10. I conclude that the local planning authority acted unreasonably and caused the appellant to incur unnecessary or wasted expense in preparing and submitting an appeal which could have been avoided. An award of costs is justified.

Costs Order

11. In the 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 Mumford of Rushmon Homes, the costs of appeal proceedings described in the heading of this decision limited to those costs incurred in relation to reasons for refusal (1) and (2) and the affordable housing element of reason for refusal (3). Such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. 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.

Robert Parker

INSPECTOR