The Planning Inspectorate

Costs Decision

Hearing Held on 9 March 2021

Site visit made on 10 March 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2021

Costs application A in relation to Appeal Ref: APP/K3605/W/20/3248698
Land to the rear of 83 and 85 High Street, Esher Surrey KT10 9QA

- 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 C Svendsen (Blackrock European Investment Fund) for a full award of costs against Elmbridge Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a row of 8 two storey terraced houses with rooms in the roof space, dormer windows, basement, ancillary parking and landscaping following demolition of existing rear extension at 85 High Street.

Decision

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

Preliminary Matters

2. The application for costs was made in writing at the Hearing by the appellant (the applicant in this costs decision) on 9 March 2021. A rebuttal response was provided in writing by the Council and the applicant has had the opportunity to address the points made.

3. At the Hearing, the Council also made an application for costs in writing. This is the subject of a separate costs decision. To avoid confusion, I have referred to that costs application as 'B' in its header, whereas this costs application is referred to as 'A' above.

Reasons

4. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and this has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The application needs to clearly demonstrate that this is the case, as parties in planning appeals normally meet their own expenses.

5. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes both procedural matters, such as delay in providing information or other failure to adhere to deadlines; and substantive matters, including: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other considerations; and, vague and generalised or inaccurate

assertions about a proposal's impact which are unsupported by an objective analysis.

6. The applicant's costs claim states that the appeal discussion hinged on the viability arguments, which are matters more easily dealt with by a discussion during the period between validation of the application and determination. Further, the two sets of valuers were so far apart that agreement could not be reached, and the appeal has resulted from a lack of realism in pricing from the Council. The costs application states that the Council's statement and analysis of the viability report was received less than 3 weeks before the Hearing, and therefore the applicant was only able to provide a rebuttal at the Hearing. Moreover, the Council introduced the "tilted balance" issue in their appeal statement and this needed a response at the Hearing.

7. The parties disputed several of the inputs into the viability spreadsheet, including Benchmark Land Value, Gross Development Value, Build Costs, Developer's Profit, and Finance Costs. This matter requires judgements to be made based on market evidence and the nature of the proposal. As can be seen from my decision, I have reached my own view having regard to the evidence before me. Whilst I do not agree with all of the figures put forward by the Council, in particular Gross Development Value, I do not consider that the evidence submitted by the Council was unreasonable.

8. The Council submitted its evidence, including its review of the applicant's financial viability appraisal, in accordance with the deadlines set out in the appeal timetable and therefore it has not acted unreasonably in this regard.

9. Paragraph 11 d) of the National Planning Policy Framework, commonly referred to as the "tilted balance", is a material planning consideration in this case due to the Council's absence of a deliverable 5 year housing land supply. The Council was correct to acknowledge this in its appeal statement and it did not prolong the proceedings by introducing a new reason for refusal.

10. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the costs application should fail and no award is made.

C Osgathorp

INSPECTOR