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 B 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 Elmbridge Borough Council for a full award of costs against Mrs C Svendsen (Blackrock European Investment Fund).
- 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 Council (the applicant in this costs decision) on 9 March 2021. The appellant has been given the opportunity to address the points raised.

3. At the Hearing, the appellant 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 'A' in its header, whereas this costs application is referred to as 'B' 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 an appellant. This includes both procedural and substantive matters. Procedural matters include: introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and, prolonging the proceedings by introducing a new ground of appeal or issue.

6. The Council's costs application is on the basis that the appellant has acted unreasonably during the planning appeal process by submitting additional information on the eve of the Hearing, giving the Council and their consultants little to no time to consider the documents and the information therein. In addition, during the course of the Hearing the appellant submitted an argument regarding the relevance of Policy CS21 of the Elmbridge Core Strategy 2011, which had not been made in their initial submission. The Council requests that costs are awarded against the appellant for introducing fresh and substantial evidence at a late stage and for the introduction of a new ground of appeal/issue, necessitating an adjournment for preparatory work that would not otherwise have arisen.

7. The appellant submitted additional information the evening before the Hearing, which included: a sketch plan showing 21 parking spaces on the existing site; Gladman Appeal Court judgement; Written Ministerial Statement of November 2014 (WMS); estate agent's schedule of comparable properties; 3 appeal decisions[1] and a Lichfield research paper[2].

8. Annexe E of the Procedural Guide to Planning Appeals states, at paragraph E.3.4, that when the appellant makes their appeal they should fully disclose their case through a full statement of case, which should comprise of a written statement containing the full particulars of their case and copies of any documents to which it refers, and any other supporting evidence. Paragraph E.3.6 states that there is normally no opportunity to add to the statement of case during the process, so the appellant should only make their appeal when they are certain that they have finalised their case.

9. Annexe E Paragraph E.9.2 states that if, exceptionally, a party feels that further evidence should be taken into account this may be taken to the Hearing. Inspectors have discretion whether to accept late evidence. Paragraph E.9.5 states that if the Inspector accepts late evidence this may result in the need for an adjournment. The other party may make an application for costs or the Inspector may initiate an award of costs. This would be on the basis that the necessary adjournment had directly caused another party to incur expenses that would not otherwise have been necessary.

10. I accepted the appellant's late evidence because the material was relevant to the consideration of the appeal scheme. However, the Gladman Appeal Court judgement[3]; WMS; 3 appeal decisions; and Lichfield research paper were all published well in advance of the Hearing and could therefore have been submitted sooner. Furthermore, whilst I appreciate the appellant's wish to submit updated comparable property information, this should have been submitted much earlier than the eve of the Hearing. The sketch parking plan could also have been submitted with the original appeal submission or at a stage more in advance of the Hearing. Consequently, I find that the appellant's submission of late evidence amounts to unreasonable behaviour.

11. Nevertheless, in order for costs to be awarded against a party, unreasonable behaviour must be shown to have directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In this case, the

[1] Ref. 3254951 (dated 30 December 2020); 3233523 & 3248497 (dated 28 July 2020); and 3164019 (dated May 2017).
[2] Small Sites: Unlocking housing delivery dated September 2020.
[3] Gladman Developments Limited v SSHCLG, Corby BC and Uttlesford DC [2021] EWCA Civ 104

Council was able to consider the late evidence in a short adjournment which did not significantly prolong the appeal proceedings. Therefore, I am unable to conclude that the appellant's unreasonable behaviour directly caused the Council to incur unnecessary or wasted expense in the appeal process.

12. Regarding the appellant's reference at the Hearing to the weight to be given to Policy CS21 of the Elmbridge Core Strategy 2011, I would have needed to consider this matter in any event and so I find that the appellant was not unreasonable in raising it as a relevant consideration. Furthermore, the Council had already submitted detailed evidence on this issue and so it did not incur extra expense for preparatory work.

13. For the reasons given above, I determine that the costs application should fail and no award is made.

C Osgathorp

INSPECTOR