



Costs Decision

Site visit made on 27 July 2021

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 23 August 2021

Costs application in relation to Appeal Ref: APP/K3605/W/ 3254697 Willow Cottage, Ridgeway Close, Oxshott, Leatherhead KT22 0LQ

- 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 Paul Binney (Stately Homes Limited) for an award of costs against the Council of Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and the construction of five three bedroom detached houses.
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Decision

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

Reasons

2. National Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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 claim for costs is presented as relating to the 2 reasons for refusal that originally formed the basis of the Council Officer's recommendation. One of these reasons was subsequently not formally adopted by the Council in their final decision on the planning application. For ease of reference and consistency, I will adopt the numbering as it appears in section 8 of the Applicant's statement of case that relates to the appeal.
4. In relation to Reason for Refusal 2, in considering the findings of an independent review into financial viability the Council were not duty bound to accept all its findings. As such, the Council did not behave unreasonably by failing to accept the recommendation of their independent viability assessor.
5. Whether the Applicant was offered an appropriate opportunity to respond to the Council's position on financial viability ahead of a decision being made is a matter of dispute between the 2 parties. The planning application was considered by a committee and the evidence suggests that the Applicant was aware of the Officer's view on viability ahead of the meeting (as indicated in the Applicant's letter to the Chair of the Sub Committee dated 24 March 2020) and was able to express a view.

6. The practicality of the opportunity that was available to the Applicant to respond is not something that I can establish from the evidence provided one way or another. Weighing this issue up, it does not on the basis of the evidence provided, indicate to the required standard that unreasonable behaviour has occurred.
7. In relation to Reason for Refusal 1, as acknowledged by the Applicant, the reason was not formally adopted by the Council. As such, it did not form a reason for refusal and was not a matter considered in detail as part of this appeal. It is unclear from the evidence how it has led the Applicant to incur unnecessary or wasted expense in the appeal process. As such, this is not established by the evidence to the required standard.
8. In overall conclusion, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

D.R. McCreery

INSPECTOR