
Costs Decision

Site visit made on 17 August 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

**Costs application in relation to Appeal Ref: APP/K3605/C/21/3271054
Land on the west side of Molesey Road, Walton-on-Thames, which is part
of the larger site known as Esher Rugby Club, 369 Molesey Road, Walton-
on-Thames, Surrey KT12 3PF address**

- The application is made under the Town and Country Planning Act 1990, sections 174, 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 R&A Car Valet.
 - The appeal was against an enforcement notice alleging, without planning permission, the erection of a detached outbuilding.
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Decision

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

Reasons

2. Awards against appellants may be either procedural or substantive. In respect of the latter, Planning Practice Guidance (PPG) explains¹ that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
3. Given the previous appeal decisions and the nature of the alleged development, there is little prospect of making a successful case on the issue of inappropriate development – unless there has been a material change. However, I am mindful that the previous developments were not the same and the specific planning merits of the alleged development have not been previously considered. The appellant also has a right to make an appeal against the enforcement notice under s174 of the Town and Country Planning Act 1990, as amended. On balance, I find that exercising that right does not amount to unreasonable behaviour in this case.
4. The PPG² also sets out the type of behaviour that may give rise to a procedural award against an appellant, including providing information that is shown to be manifestly inaccurate or untrue. In that regard, the appellant's case seeks to rely, in part, on previous structures in situ, which the Council have

¹ Paragraph: 053 Reference ID: 16-053-20140306

² Paragraph: 052 Reference ID: 16-052-20140306

demonstrated to have been unlawful. However, I have dealt with that issue in my Decision and afforded limited weight to it (as I have on matters relating to staff welfare facilities). Even if I were to agree that it amounted to unreasonable behaviour on the part of the appellant, I do not consider it would have caused the Council to have incurred unnecessary or wasted expense as that information would likely have been provided anyway as part of the planning history of the site. It is also a matter which the Council will have been able to deal with quickly and relatively easily.

Conclusion

5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Richard S Jones

INSPECTOR