



Costs Decision

Site visit made on 26 August 2021

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27th October 2021

**Costs application in relation to Appeal Ref: APP/K3605/W/21/3270542
Claremont House, 34 Molesey Road, Hersham, Walton-on-Thames
KT12 4RQ**

- 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 Northedge Limited for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for replacement of existing roof structure to form six, 1 bedroom flats and courtyard garden, complete with shared ground level garden, refuse and recycling stores and cycle storage.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that 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. There is no obligation for a Council to follow the advice of their officers, but if they do not do so then the Council is required to provide an objective justification for its decision so as to provide evidence to substantiate each reason for refusal.
4. In this case the Council has provided no substantive evidence whatsoever to justify the reason for refusal relating to parking. The Council's case was based on their being an increase in on-street parking stress. However, there was nothing in front of me to show that the area suffers from on-street parking stress. The only evidence on the parking situation was put in by the appellant.
5. Furthermore, the case was based on the cumulative effect of proposed or committed developments in the survey area. That being the case, as a minimum, it would be necessary to set out a list of those schemes together with information on parking secured or not, and then base a case on the purported effects. No such list was put in front of me and thus any case was based on vague assertions of the effects.
6. The Council's refusal in this respect was therefore unreasonable and led to the appeal on this ground, which should have otherwise not been necessary, with the appellant expending costs in that regard.

7. In relation to the issue of affordable housing, however, at the time of the Council's decision no Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) was in place to secure such provision. The applicant's costs application indicates that a "unilateral undertaking was agreed prior to committee", but I have not been provided with a copy. Indeed, the Planning Obligation used to secure the provision of affordable housing was dated 7 October 2021 as part of this appeal.
8. Therefore, while frustrating to the applicant, at the time when it made its decision the Council was correct in saying that affordable housing was not secured and therefore this reason for refusal was not unreasonable.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. In 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 Northedge Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

RJ Jackson

INSPECTOR