



Costs Decision

Site visit made on 25 January 2022

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Costs application in relation to Appeal Ref: APP/A3655/W/21/3282313 90 High Road, Byfleet, WEST BYFLEET, KT14 7QT

- 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 Flow Plumbing Services Ltd for a full award of costs against Woking Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing commercial unit and construction of four 1 bed room flats, commercial unit (use class E), parking and landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense.
3. The applicant submits that the Council's first refusal reason was unsubstantiated and that it followed positive pre-application discussion and a favourable officer report. Elected members are however entitled to take a contrary view to an officer recommendation and views expressed during prior discussions, and may be able to apply a greater level of local knowledge to a proposal.
4. I am satisfied that the reasoning of the Councillors is sufficiently set out within the minutes of the committee meeting and that this follows through to a refusal reason that states clearly and precisely the full reasons for the decision. These views were then further substantiated by the Council during the appeal process.
5. The applicant submits that they were not given an opportunity to enter into an agreement to secure mitigation measures relating to the Thames Basin Heaths Special Protection Area. It would however have been unreasonable for the Council not to include this refusal reason as the mitigation measures had not been secured at the time the Council made its decision. The opportunity to provide the legal agreement is built into the appeal process with clear

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

guidelines on when this should be provided. I am therefore not satisfied that this matter constitutes unreasonable behaviour.

6. The Council refers to the Nationally Described Space Standards (NDSS) in its statement in detail, where it carries out a technical analysis of the proposal against the NDSS. I have established that the NDSS should not be applied for the reasons set out in my appeal decision. I therefore find the Council's assessment of the proposal against the NDSS to constitute unreasonable behaviour.
7. I also need to consider whether the unreasonable behaviour of the Council has resulted in unnecessary or wasted expense on the part of the applicant. The applicant has spent time and effort addressing this matter in written submission during the appeal process and by submitting an amended plan. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

8. 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 Woking Borough Council shall pay to Flow Plumbing Services Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the assessment of the proposal against the NDSS; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Woking 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.

A Tucker

INSPECTOR