
Costs Decision

Site visit made on 22 June 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2022

Costs application in relation to Appeal Ref: APP/P3610/W/21/3280972 36, 38 and 40 Rowden Road, Epsom KT19 9PW

- 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 Rosebery Housing Association for a full award of costs against Epsom and Ewell Borough Council.
 - The appeal was against the refusal of planning permission for development described as demolition of Nos 36, 38 and 40 Rowden Way, and garage block at Crane Court, and the erection of 12no new dwellings (including 8no 1 bedroom flats, 2no 2 bedroom flats, and 2no 3 bedroom houses), including associated landscaping, access and parking.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (the PPG) 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 process¹.
3. In essence, the costs application is that it was unreasonable for the Council to refuse planning permission for the reasons that it did, given that the proposal was amended to reflect advice given by officers during pre-application engagement. The Council was given the opportunity to comment on the costs application. I have taken comments received into account in my decision.
4. The PPG states that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs².
5. The applicant believed that the submitted (amended) proposal addressed the Council's concerns, expressed by officers, during pre-application engagement. However, pre-application advice provided by officers (be that construed as 'requests' or 'encouragement' and albeit even if 'positive' in some respects) does not pre-empt the democratic decision making process or a particular outcome, in the event that a formal planning application is made³ — an amended proposal 'could' resolve issues identified at the pre-application stage and/or it may give rise to new issues⁴. The detailed officer report to the

¹ PPG paragraph ID: 16-030-20140306

² PPG paragraph ID: 16-050-20140306

³ PPG paragraph ID: 20-011-20140306

⁴ PPG paragraph ID: 20-012-20140306

Council's Planning Committee summarised the pre-application advice and a full extract was provided as part of the planning application submission⁵. There is no evidence of any member, statutory or community consultation as part of the pre-application engagement, either by the Council or the applicant.

6. The Council was not, therefore, bound to grant planning permission. Having due regard to the officer report, which I consider was adequate for this purpose, members accepted the officer recommendation and refused planning permission. The Council's reasons for refusal (RfR) relate to matters of acknowledged planning interest. While the Council did not submit an appeal statement, it has relied on the officer report and is entitled to do so. The report substantiates the RfR with regard to relevant local and national planning policy and consultation. I have addressed the RfR, and the difference in planning judgement between the main parties, in my appeal decision.
7. I appreciate that the Council took over a year to make its decision, for reasons that are not clear to me. However, in making the decision that it did, I am satisfied that it has properly exercised its development management responsibilities⁶. As will be evident from my appeal decision, in refusing planning permission it did not prevent or delay development which should clearly have been permitted⁷.
8. There was, therefore, no 'clear expectation' that the scheme submitted 'was wholly in line with planning policy'. Furthermore, no reasonable foundation to have submitted the application 'on the basis that it would successfully secure planning permission'.
9. Consequently, these circumstances have led the applicant to decide to pursue the matter through the appeal process. Parties in planning appeals normally meet their own expenses⁸.

Conclusion

10. For the reasons given above, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. A full award of costs is not therefore justified, nor is a partial award for the same reasons.

Robin Buchanan

INSPECTOR

⁵ Design and Access Statement - Appendix B, MH Architects Ltd

⁶ PPG paragraph ID: 16-028-20140306

⁷ PPG paragraph ID: 16-049-20140306

⁸ PPG paragraph ID: 16-028-20140306