



Costs Decision

Site visit made on 26 July 2022

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 5 August 2022

Costs application in relation to Appeal Ref: APP/K3605/W/21/3289310 Queensgate House, South Road, Weybridge, KT13 9JX

- 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 Monkey Puzzle Day Nurseries Ltd., for an award of costs against the decision of Elmbridge Borough Council.
 - The appeal was against a refusal to grant planning permission under Section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

Reasons

2. The 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 process. The PPG sets out what type of behaviour may give rise to a substantive award against a local planning authority.
3. The applicant considers the Council behaved unreasonably by failing to produce evidence to substantiate each reason for refusal; by refusing planning permission on a planning ground capable of being dealt with by condition(s); by not determining the case in a manner similar to others that have been permitted; and by making inaccurate assertions about the proposed impact. A full award of costs is sought.
4. The main issue for the appeal was whether the proposed change of use could be permitted by a variation to Condition 3 imposed on planning permission Ref 1991/0151. I concluded in my appeal Decision that it could not. I also concluded that the reason for imposing the condition was reasonable, relevant to planning and the development, enforceable and precise and the appeal was dismissed. Accordingly it was not necessary for me to consider further the technical evidence provided or whether the imposition of planning condition(s) would make the proposal acceptable.
5. It is regrettable that the Council did not deal with the application in the most appropriate manner, which would have been to advise the applicant to submit a planning application for a change of use. Moreover, the Council did not provide a very clear justification for its decision. This amounts to unreasonable behaviour by the Council. However, given my conclusions in my appeal

Decision, planning permission should not have been forthcoming. To that extent the appeal could not have been avoided. Moreover, there is no evidence that additional detailed technical advice was necessary for the appeal so there was no unnecessary or wasted expense in that regard.

6. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for costs is refused.

S Harley

INSPECTOR