

Costs Decision

Site visit made on 21 September 2022

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Costs application in relation to Appeal Ref: APP/K3605/W/21/3284574 Warehouse, Thames Street, Weybridge KT13 8JG

- 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 Nick Jones for a full award of costs against Elmbridge Borough Council.
 - The appeal was against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for new windows in front and rear elevations and replacement roof with solar panels without complying with a condition attached to planning permission Ref 2015/4593, dated 5 April 2016.
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Decision

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

Procedural Matters

2. It has been brought to my attention that the applicant name on the costs application and appellant name on the appeal form differ slightly. However, evidence has been provided to confirm that this is the same person and I am satisfied that the costs applicatio can proceed.

Reasons

3. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
4. The PPG states that examples of unreasonable behaviour include failure to substantiate reasons for refusal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and acting contrary to national or local policy.
5. The applicant considers that the Council has exhibited unreasonable behaviour that made the appeal necessary, resulting in unnecessary and wasted expense. Specifically, the applicant states that the Council provided varied and contradictory advice in the run up to the submission of application ref. 2020/2821.
6. Whilst no formal pre-application request was made in respect of the development, informal advice was obtained from officers indicating that a S73 application should be submitted to deal with material changes to the previously approved development. Informal advice given before an application is made is

given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all relevant factors, including submitted plans and local planning policies. Moreover, the evidence before me shows continued and proactive communication throughout the planning process between the Council and applicant.

7. I note that throughout the planning process there had been some confusion between the plans submitted and what existed on site, the Council alleging that discrepancies existed. These discrepancies are more fully discussed in the substantive decision on the appeal, and it is this matter which led to the withdrawal of the application from the planning subcommittee.
8. Despite the identified discrepancies, the Council accepted the application and attempted to assess it, even though they were, albeit later, aware that the plans did not correspond with the as-built situation on site. These matters may have been resolved more appropriately prior to the validation of the application or through amended plans that more accurately reflected the as built situation. Nevertheless, the request for other amendments to the submitted plans together with clarifications was, in my view, part of typical negotiations during the planning application process. Consequently, I am not convinced from the evidence that the Council's behaviour was manifestly uncooperative or advice clearly contradictory.
9. The applicant has referred to another appeal under reference APP/K3605/W/16/3149097, where costs were found in their favour. That previous appeal, and its associated costs application, has no bearing on this application, which has been assessed on the evidence before me and circumstances on this occasion.
10. In conclusion, whilst I acknowledge the applicant's motivation for applying for an award of costs, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

Conclusion

11. I conclude that the application for an award of costs should be refused.

A Price

INSPECTOR