



Costs Decision

Site visit made on 21 November 2022

by Nichola Robinson BA (hons) MA MRTPI

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

Decision date: 19 December 2022

Costs application in relation to Appeal Ref: APP/K3605/W/22/3300969 39 Charlton Avenue, Hersham, Walton-on-Thames KT12 5LE

- 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 M Anderson for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for the subdivision of existing dwelling with consented extension to create 3 no 1 bedroom and 4 no 2-bedroom apartments with associated parking, bin and cycle storage.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive. In this instance, the applicant refers to the Council's alleged unreasonable approach during the determination of the planning application.
3. The applicant states that the Council has provided vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by evidence.
4. I have found in favour of the applicant with regards to the first refusal reason. However, the Council have presented a suitably substantiated case in support of their decision which went into appropriate detail on why they considered that the proposal conflicted with Policy DM2 of the Elmbridge Development Management Plan (2015) and Policy CS17 of the Core Strategy (2011).
5. I have found in favour of the applicant with regards to the level of car parking provision and the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings. Notwithstanding this the Council presented a suitably substantiated case in support of why they felt that the proposal was unacceptable in these regards.
6. The determination of the proposal on the basis of the submitted plans without seeking amendments to the parking layout and bin store provision does not amount to unreasonable behaviour.

7. The applicant states that refusal reason 4 was contrary to the recommendation to planning committee that permission be granted subject to completion of a satisfactory legal agreement to secure affordable housing. However, members reached a different conclusion on the proposal which they are entitled to do. Thus, the appeal was inevitable in any case due to the imposition of refusal reasons 1, 2 and 3, and therefore it would have been unnecessary to secure a legal agreement for a proposal which did not benefit from planning permission.
8. Furthermore, the appeal is not supported by a completed legal agreement to secure the affordable housing contribution and I have found in favour of the Council with regards to the requirement for this to secure a review mechanism. However, in this instance I have found that this would not significantly outweigh the aforementioned benefits of the proposal. Thus, refusal reason 4 cannot be considered unreasonable
9. I find that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

Nichola Robinson

INSPECTOR