



Costs Decision

Site visit made on 21 November 2022

by Nichola Robinson BA (hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Costs application in relation to Appeal Ref: APP/K3605/W/22/3301985 4 Queens Road, Hersham, Walton-on-Thames KT12 5LS

- 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 Mr Richard Ryan (Pegrid Ltd) for a partial award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for partial change of use from Class E (Commercial) to C3 (Residential), first-floor rear extension, roof terrace and alterations to fenestration.
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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 any objective analysis. It is also stated that the Council did not review the case promptly following the lodging of the planning appeal.
4. I have found in favour of the appellant with regards to the second refusal reason on the effects of the proposal on the living and working conditions of the occupants of 2 Queens Road. 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 cited policy DM2 of the Development Management Plan (2015) and Design and Character supplementary planning document (2012) and the 45-degree light test was applicable in this instance. Refusal reason 2 was, supported by substantive evidence and no unreasonable behaviour has occurred.
5. The Council have confirmed that, following the receipt of a parking stress survey, they would no longer seek to pursue refusal reason 3. The parking stress survey was not available to the Council at the time of the application determination. The appellant contends that the parking stress survey was unnecessary given the minor scale of the shortfall in parking. The Council's

case on the implications of the proposed parking on the living conditions of neighbouring residents was supported by substantive evidence and no unreasonable behaviour has occurred.

6. Additionally, the Council confirm that they were in receipt of a viability appraisal 2 months before the application was determined but failed to take it into consideration as their validation checklist states that once an application has been registered there will be no further opportunity to contend the viability of the development.
7. Moreover, the Council also failed to comment on the viability appraisal during the appeal period. Despite the wording of the validation checklist, I find that the failure to take into consideration this information amounts to unreasonable behaviour. However, a requirement for a review mechanism to secure appropriate affordable housing provision is in accordance with local policy.
8. Therefore, as this proposal failed to provide a legal agreement making adequate provision for a review mechanism, the fourth refusal reason was inevitable in any case. I have not been presented with any evidence of substantive work undertaken preparing a case in respect of the failure to take into account the viability appraisal. Therefore, I find that this unreasonable behaviour did not result in unnecessary or wasted expense during the appeal.
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