
Costs Decision

Site visit made on 31 October 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Costs application in relation to Appeal Ref: APP/K3605/W/21 3285531 Child's Play Centre, Manor Road, Walton on Thames, Surry, KT12 2PH

- 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 PA Housing for a full award of costs against Elmbridge Borough Council.
 - The appeal was against refusal of planning permission for the demolition of the existing former nursery buildings and the erection of an affordable housing scheme which will accommodate 19 residential units, with associated access and other works including car and cycle parking, amenity space and refuse storage.
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Decision

1. The application for a full 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.
3. It is submitted that the Council have behaved unreasonably by making a decision against officer advice when a previous appeal decision clearly found the site to be acceptable for residential development. In fact, a full award of cost was granted to the appellant of the last appeal (APP/K3605/W/18/3209400), a case where, as in this case, members of the committee made its decision against officer advice.
4. It is contended that there is no evidence that members of the committee carried out a proper planning balance exercise in coming to its decision taking into account the proposal is for 100% affordable housing and the Council cannot demonstrate a five-year supply of deliverable housing sites.
5. It is further contended that the Council has failed to produce evidence to substantiate its reason for refusal and made vague, generalised, and inaccurate assertions about the proposal's impact, which are unsupported by an objective analysis. Refusal reason 1 is vague as it does not provide any details as to how the proposal would be out of keeping with the prevailing character of the area and does not indicate which properties or which roads the proposal adversely affects.

6. The application for costs is made in relation to the time and expense of having to make an unnecessary appeal against a refusal that should have been granted.
7. Members of the committee are required to assess the merits of the planning application taking into account those planning considerations and the policies contained within the development plan. Committee members are not bound to accept the recommendation of their officers and can attribute different weight to those planning considerations provided that they substantiate their decision.
8. The Council points out that the need to apply a tilted balance was set out in the Committee Report and reiterated in the officer introduction to the item at the meeting. The Committee Minute makes it clear that members reviewed the relevant material planning considerations and documents and that they applied the tilted balance. The minute sets out that members considered the harm to the character and appearance of the area and residential amenities of occupiers of neighbouring properties, along with the failure to secure affordable housing, and that this would substantially and demonstrably outweigh the benefits of the proposal. The Council's reason for refusal 1 succinctly sets out member concerns and those relevant development plan policies relating to those concerns.
9. To my mind, both the Council Minute and refusal reason 1 clearly set out the specific concerns of members in relation to the proposed development. I therefore disagree with the applicant as I consider a proper planning balance was applied. Furthermore, I do not consider refusal reason 1 to be vague, generalised, or make inaccurate assertions about the proposal's impact. I am satisfied that the local planning authority has explained why the proposed development should not be granted planning permission. The fact that I have arrived at a contrary view in relation to the proposed development does not, of itself, show that the local planning authority including its committee members have behaved unreasonably.
10. I note that a cost award may previously have been made relating to a different appeal at this site. However, I have not been provided the full details of that cost award to assess what similarity, if any, that cost application would have to that before me. I have considered this cost application on its own merits and on the basis on the evidence that is before me.
11. For those reasons set out above, I cannot conclude that the appeal would or could have been avoided.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs is not justified.

Nicola Davies

INSPECTOR