



Costs Decision

Site visit made on 11 January 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2023

Costs application in relation to Appeal Ref: APP/K3605/W/22/3302102 Southlands, 40 Queens Road, Weybridge, Surrey, KT13 0AR

- 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 A Smith of First Regent Securities Ltd for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for the development proposed is a terrace of three two-storey houses with rooms in the roof space following demolition of existing garage (for Access, Appearance, Layout and Scale).
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (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. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.
3. The PPG states¹ that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; and not determining similar cases in a consistent manner.
4. The Council refused the application for reasons relating to character/trees, including the removal of 2no protected trees and highway safety with particular regard to the access arrangements. A lack of financial contributions towards off-site affordable housing and Strategic Access Management and Monitoring Contribution (SAMM) for the Thames Basin Heaths Special Protection Area (SPA). Whilst there appeared to be an agreement in principle to supply a

¹ Paragraph 049 Reference ID: 16-049-20140306

completed planning obligation from the applicant, it remains that such a mechanism to deliver the required financial contributions at the time when the Council made its decision was not present.

5. Thus, I consider that the Council was not unreasonable in including such refusal reasons in relation to these matters on its decision notice, especially as it appears that initially the contribution towards affordable housing was being disputed by the applicant. I accept that the planning application had to go to the South Area Planning Sub Committee twice for determination, but this did not prevent or delay development which should clearly be permitted. Additionally, even though the parties eventually agreed to remove reasons for refusal 3 and 4 for consideration due to the presence of a completed Unilateral Undertaking that would deliver policy compliant contributions, an appeal was inevitable in this respect.
6. The Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. The Council's refusal reasons 1 and 2 on its decision notice are complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan which it would be in conflict with, and cites conflict with the National Planning Policy Framework. An appeal statement has also been submitted to support these reasons for refusal.
7. Nonetheless, the application subject of this appeal has been submitted for a development very similar to a previously refused scheme². I accept that the previous scheme was for a pair of semi-detached, 2no. storey houses, compared to a row of 3no. terraced houses, but the location to the rear of No 40 is similar, it involved the removal of protected trees and had similar access arrangements. However, the effect on character/trees and the access/highway safety were not given as reasons for refusal on the previous decision notice. Therefore, these matters were introduced on this latest planning application, despite not being previously raised by the Council.
8. In this instance, I note that the PPG lists not determining similar cases in a consistent manner³ may give rise to a substantive award against a local planning authority. I accept that in respect of character and trees, there is a little more subjectivity when compared towards the highways matters. Whilst the Council disregarded the recommendations of its Tree Officer and the Local Highway Authority, paragraph 48 of the PPG also advises that the refusing of planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. This was evident in both of these reasons for refusal, particularly surrounding highways.

Conclusion

9. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

² 2021/1356

³ 048 Reference ID: 16-048-20140306

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Elmbridge Borough Council shall pay to First Regent Securities Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's view that the proposal would have a detrimental effect on character/trees and highway safety; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Elmbridge Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

W Johnson

INSPECTOR