

Costs Decision

Hearing (Virtual) held on 14 February 2023

Site visit made on 15 February 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2023

Costs application in relation to Appeal Ref: APP/K3605/W/22/3303891 Land North of 6 Kings Warren, Oxshott, Leatherhead KT22 0PE

- 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 Elmbridge Borough Council for a partial award of costs against Mr Jamie Roberts.
 - The appeal was against the refusal of planning permission for detached three-storey house with detached garage and new access following demolition of existing garage.
-

Decision

1. The application for a partial award of costs is refused.

Procedural Matters

2. The Council's application for costs, and the appellant's response to the application, were made in writing prior to the Hearing. Because they are therefore a matter of record and the written submissions were not amended or supplemented in any substantive sense at the Hearing, it is not necessary to rehearse them in detail here.

Reasons

3. The Council asserts that the appellant acted unreasonably in respect of viability information relevant to affordable housing contributions. It is seeking an award of costs to cover the expense incurred in obtaining an independent review of submitted viability information.
4. Policy CS21 of the Core Strategy 2011 covers affordable housing. The supporting text to the policy sets out that in the exceptional circumstances where it is considered that delivery of affordable housing in accordance with the policy is unviable, this must be demonstrated through the submission of a financial appraisal, and that the Council will require the applicant to pay for an independent review of the information submitted. The Developer Contributions Supplementary Planning Document ('SPD') 2020, updated 2021 also advises that the Council requires the applicant to pay for an independent review of submitted viability information. It continues that the application will be registered only after the applicant confirms in writing that they would meet the review fee, and this requirement is also enshrined in the Council's local validation requirements.
5. As part of the planning application, the appellant submitted a Viability Assessment ('the VA') which found that no contribution towards affordable housing would be viable. The planning application was validated with this

information, but no fee for independent review was ever paid, and the Council did not therefore consider the content of the VA prior to determining the application.

6. I note that the Council contacted the appellant to request payment for the review of the VA on 21 June 2022 after gathering quotes from independent consultants. However, I have been provided with a copy of an email from the Council to the appellant dated 22 June 2022 which states '...for now I would not advise paying for the viability assessment.' The application was refused shortly after on 28 June 2022.
7. From the information before me, I do not doubt that the Council's advice not to pay was a pragmatic approach given its other reservations with the scheme, and I have no firm reason to find that there were insufficient grounds to justify the Council's first reason for refusal. Be that as it may, I find given the timeline and explicit advice from the officer dealing with the planning application not to pay for the VA review just one day after the payment had been requested that the appellant did not behave unreasonably in not paying the fee for review of the VA at planning application stage.
8. Following the lodging of the appeal, the Council sought an independent review of the VA at its own expense. I acknowledge that the Developer Contributions SPD states that 'the Council will seek to recover any cost associated with the review of the viability information as part of the appeal process via the application for cost'. However, the Planning Practice Guidance ('the PPG') states that costs may be awarded where a party has behaved unreasonably; and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
9. In this case, the appellant followed advice from the Council not to pay for the VA review during the planning application process, and there is no dispute between the parties that the Council had not made, and did not make, any further request for a fee to cover the independent review of the VA at appeal stage. Given these circumstances and on the basis of the evidence before me, I am not persuaded that the appellant has behaved unreasonably in failing to pay for an independent review of the VA. Notwithstanding the provisions within the CS, Developer Contributions SPD and local validation requirements, it therefore follows that expense incurred by the Council would not have been directly caused by unreasonable behaviour on the part of the appellant.
10. I can understand the Council's concern at having to cover the cost of review of the VA against the stated position in its CS, Developer Contributions SPD and local validation requirements. Nevertheless, I find for the above reasons that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a partial award of costs is refused.

J Bowyer

INSPECTOR