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## Costs Decision

Site visit made on 15 February 2023

**by R J Redford MTCP MRTPI**

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

**Decision date: 19 April 2023**

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### **Costs application in relation to Appeal Ref: APP/K3605/W/22/3290668 Britannia House, Pool Road, West Molesey, KT8 2AB**

- 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 Paragon Asra Housing Ltd for a full award of costs against Elmbridge Borough Council.
  - The appeal was against the refusal of planning permission for the demolition of industrial buildings and redevelopment to provide 97 affordable residential units in three blocks of duplex apartments and flats and two pairs of semi-detached houses.
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### **Decision**

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

### **Reasons**

1. 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. Unreasonable behaviour can be considered as either substantive or procedural in nature.
2. In this instance the applicant considers the Council has behaved unreasonably by not giving due weight to the extant permission in existence on the appeal site and refusing the appeal on matters relating to flooding, design, scale, massing, and outdoor space which were otherwise acceptable in the previous scheme, and not taking account of the worsening housing supply issue within the borough.
3. It is evident the Council were aware of the extant permission during its considerations, as it is referred to within the officer recommendation. On review of the permitted scheme and appeal scheme there is a series of changes, including an increase in the number of dwellings, the form those dwellings would take and their layout within the appeal site. Consequently, I am satisfied these changes would alter the scheme enough to justify the Council's fresh consideration of design, scale, massing, and outdoor space on the appeal scheme's own merits, rather than relying on the previous decisions relating to the extant permission.
4. In relation to flood risk, matters relating to character and appearance and the living conditions of future occupants are appropriate to consider within the balancing exercise required by paragraph 164a) of the National Planning Policy Framework. The Council found that the sustainable benefits to the community, including the provision of additional housing to bolster the borough's worsening

housing supply, were reduced by the effect the scheme would have on character and appearance and future occupiers' living conditions. The Council considered this reduction of benefit was to such a level as to no longer outweigh the flood risk. Although I empathise with the appellant on this change of direction from the extant permission, this is a matter of planning judgement.

5. In conclusion and from the evidence before me, I am satisfied the Council has shown understanding of the scheme as well as the extant permission. Relevant planning policies from the development plan have been referred to within the decision notice, in line with section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, so have demonstrated appropriate planning grounds for the refusal. Therefore, and notwithstanding that I have allowed the appeal, I find the Council's decision to refuse has been fairly substantiated on all grounds.
6. It is appreciated the application went to the planning committee with a recommendation for approval, however Elected Members of the Council are not duty bound to follow the advice of its professional officers. Although a different decision was reached, for the above reasons I am satisfied the Council has demonstrated the planning grounds for its decision and provided evidence to substantiate that reasoning.
7. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*RJ Redford*

INSPECTOR