The Planning Inspectorate

Costs Decision

Site visit made on 20 November 2023

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 1 December 2023

Costs application in relation to Appeal Ref: APP/K3605/Q/23/3315907
Land South of 17 to 19 Church Street, Weybridge, Surrey KT13 8DE

- 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 Ashwood Investment and Development Ltd for a full award of costs against Elmbridge Borough Council.
- The appeal was against the refusal of for an application under section 106A that sought to have a planning obligation modified as follows: *'The obligation to be modified so that the on-site provision for affordable housing is delivered, instead, as a financial contribution towards off-site affordable housing'*

Decision

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

Procedural Matters

2. Costs may be awarded where: applications are made in a timely manner; unreasonable behaviour has occurred; and where that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process[1]. It is not a punitive costs regime, but rather one that seeks to ensure that all parties to planning appeals support an efficient and effective planning system.

3. I note that the application for costs was made 'late', in September 2023. The Planning Inspectorate deemed that it could be considered in this case, on the basis of the context for the application being made. This has not altered my considerations of the application itself in accordance with the Planning Practice Guidance.

Reasons

4. The Applicant's reasons for seeking costs are set out in their application. The Council's response is also provided in writing. I do not repeat them here.

5. A number of emails, dated variously between 11 September and 19 October 2023 between the Applicant and the Council, have been submitted. These emails show that there was much to-ing and fro-ing between the planners acting on behalf of both main parties and the relevant housing or legal departments and/or client(s). They demonstrate the positive part that planning professionals play in the planning system in order to find solutions on a daily basis.

[1] *Planning Practice Guidance* Paragraph: 030 Reference ID: 16-030-20140306

6. The key here is whether the Council's actions represented unreasonable behaviour. And if so, whether this behaviour resulted in unnecessary or wasted expense. In reviewing these emails, which relate in part to a re-submission for the same site, I find that the Council does not appear to have acted unreasonably. It has continued to re-iterate an entirely logical and pragmatic position which is this – if an exceptional circumstance is demonstrated in this case, then a financial contribution for an off-site provision could be acceptable. However, for that to occur it would need to be evidenced. Given that planning is there to act in the wider public interest, this is an entirely reasonable and rational stance for the Council to take.

7. Furthermore, both main party's focussed their efforts on answering the question as to whether the modifications sought continued to comply with Policy CS21, rather than the question set out in statute – whether the modifications sought would continue to serve the purpose equally as well.

8. Nonetheless, the case presented by the Council was not unreasonable. It addressed their concerns which were originally set out in the decision notice and reason for refusal. It was not unreasonable for the Council to approach this case in such a manner. Indeed, it acted as many local authorities across the country do – having carefully considered the application put before it, refused permission, then responding to the appeal process in a timely manner.

9. It has also appeared to have continued to have engaged the Applicant's planning agent in trying to find solutions rather than problems. When considered in the round, I do not find that the Local Planning Authority in this instance has acted unreasonably.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

C Parker

INSPECTOR