Costs Decision

Hearing held on 31 October 2023

Site visit made on 1 November 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2023

Costs application in relation to Appeal Ref: APP/K3605/W/22/3310449
Land north of Ramli, Beech Close, Cobham KT11 2EN

- 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 full award of costs against Mercatura Developments Ltd.
- The appeal was against the refusal of planning permission for a detached two-storey block of 5 flats with rooms in the roof space, bin and cycle stores and associated access and landscaping.

Decision

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

The submissions

2. The costs application was submitted in writing and Mercatura Developments Ltd (the appellant) responded in writing. No additional points were made by either party at the hearing.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.

4. The Council considers that the appellant has behaved unreasonably by submitting a new Financial Viability Assessment (FVA) as part of their appeal submission. As a result of that, and the appellant's failure to pay for a review of the assessment in line with the requirements of the Council's Developer Contributions Supplementary Policy Document (SPD), the Council consider it has incurred unnecessary expense in terms of preparatory work and the attendance of an additional witness at the hearing.

5. The document in question, Appendix D of the appellant's statement of case (here on called the Appendix D FVA), is clearly written in the context of the FVA submitted during the application as an update and refers to the methodologies and assumptions set out within that previous document.

6. As the viability of the scheme regarding affordable housing contributions was a determining factor in the refusal of the associated planning application, it does not seem to me to be unreasonable for the appellant to defend their position on this matter. Therefore, I am satisfied that, in this instance, the Appendix D FVA constitutes an integral part of the appellant's case. Moreover, in relation to the

economic climate, the passage of time and the alterations to the scheme during the application process, I am satisfied that it was necessary for the FVA to be reviewed and to reflect up-to-date financial figures to provide accurate evidence for the appellant's case.

7. I therefore do not find that the Appendix D FVA, which was submitted at the beginning of the appeal process as a direct response to one of the Council's reasons to refuse, constitutes an introduction of fresh or substantial evidence. Furthermore, at 10 pages long, in this situation, I do not consider it to be excessive in length or unduly onerous for the Council to review.

8. It is appreciated that to support its case, the Council felt it necessary to pay for a further viability review and the appearance of consultees at the hearing. However, as a main issue for the refusal of the application, I do not consider these costs to be unnecessary or wasted, specifically in relation to the necessity for up-to-date figures to be considered.

9. It is noted that within paragraph 4.53 of the SPD, it states that 'In such cases, 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 proceeding sentences refer solely to cases where viability review fees have been agreed at validation of an application but subsequently not received, it does not refer to cases which have been appealed.

10. For the reasons given above, I therefore find unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

R J Redford

INSPECTOR