



Costs Decision

Site visit made on 12 December 2023

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Costs application in relation to Appeal Ref: APP/K3605/W/23/3321194 90 Woodfield Road, Thames Ditton KT7 0DS

- 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 Jim Reed of Reed Watts for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for extensions and alterations to convert existing house into 5 flats, single-storey outbuilding, bin stores and associated parking and landscaping.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. PPG also provides examples of unreasonable behaviour by local planning authorities. These include the failure to produce evidence to substantiate reasons for refusal and making vague, generalised or inaccurate assertions unsupported by objective analysis as well as preventing or delaying development that should have been permitted, or that could have been dealt with by condition. It also includes withdrawal of any reason for refusal.
4. It took a considerable time to determine the application and I appreciate that this would have frustrated the appellant, in particular given advice on the scheme was sought beforehand. However, while delayed, the Council had sought amended/additional information to attempt to overcome certain issues. The appellant could have made an appeal against the non-determination of the application. In any event, there is no clear evidence that the Council would have reached a different decision, and therefore avoided the need for an appeal, were the decision made sooner.
5. Pre-application advice is not binding, and Members do not have to accept the advice of their officers. In this instance a case has been made by the Council that the proposed development would be unacceptable in regard to character and appearance and living conditions. My decision makes it clear that I have reached the same conclusion and the appeal is dismissed.
6. Whatever procedural concerns there may have been prior to the determination of the application, including at the Planning Committee meetings, all parties

have had opportunity to make their case as part of the appeal process. Consequently, while I understand the annoyance with events prior to the appeal, the appellant has not been prejudiced and has been able to present their evidence in the appeal.

7. Although the appellant had been working towards providing a planning obligation, there was no completed one at the time of the application being determined. The inclusion of a refusal reason relating to affordable housing provision could have been appropriate, were an obligation necessary.
8. Notwithstanding this, the Council have failed to substantiate this reason for refusal and subsequently withdrawn it. Reference to the change being following the receipt of recent appeal decisions is made. However, no specific appeal decision is referred to and those provided with the Council's appeal statement were all made prior to the date of the application being refused. Not being able to substantiate this reason, and withdrawing it without clear justification for the change in their stance on the matter, was unreasonable. The need to defend this reason for refusal by the appellant would have led to them incurring some costs.
9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the reason for refusal relating to affordable housing provision and a partial award of costs is therefore warranted.

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 Mr Jim Reed of Reed Watts, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the affordable housing provision reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the body awarded against, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stuart Willis

INSPECTOR