



Costs Decision

Site visit made on 10 October 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 June 2024

Costs application in relation to Appeal Ref: APP/K3605/W/22/3312666 West Acre, 9 Claremont Park Road, Esher, Surrey, KT10 9LT

- 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 Roy Kemp of Claremont Fan Court School for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for the change of use of the existing residential dwelling (Use Class C3) to education use (Use Class F1) ancillary to the Claremont Fan Court School, and the creation of a new pedestrian access.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the 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. Awards of costs against a local planning authority may be made on either procedural or substantive grounds. Examples of procedural grounds given in the PPG include the "withdrawal of any reason for refusal"¹; examples of substantive grounds include "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations" and "failure to produce evidence to substantiate each reason for refusal on appeal"². The applicant's claim against the Council falls within these broad examples, and relates to the two reasons for which planning permission had been refused.
4. The first reason for refusal related to the loss of West Acre as a residential dwelling; essentially, the Council did not consider that this loss would be outweighed by the community benefits of the appeal scheme, while the applicant did. For reasons set out in the main appeal decision, I agreed with the applicant that the benefits of the scheme would outweigh the very limited loss of housing. However, that I reached a different conclusion to the Council on this matter is not in itself an indication that their reason for refusal was unsubstantiated. Taken as a whole, the Council's justifications for weighing the loss and benefits as they did were substantiated in their evidence, albeit

¹ Paragraph: 047 Reference ID: 16-047-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

relatively briefly in their appeal statement, and in terms which I did not ultimately find persuasive.

5. The second reason for refusal related to the effect of the operation of Claremont Fan Court School on the local road network. The Council's position is that it decided, advised by the County Highway Authority, that it did not wish to maintain that reason for refusal in the light of the additional information submitted by the appellant during the appeal.
6. For reasons which are again set out more fully in my main decision, the Council's concerns (as well as those of many local residents who also responded to the planning application and appeal consultations) primarily related to existing traffic already accessing the school site, rather than to the potential impacts as a consequence of the appeal scheme. The supporting information with the planning application stated that "the proposal will not generate any additional traffic", and that servicing and school traffic would "continue to use the existing access points and [there would] be no increase in traffic on the access road to West Acre".
7. Given all this, I found the Council's stance on this issue confused from the beginning; its reasoning and arguments were neither clear nor persuasive. Notwithstanding that the commitment to preventing increased use of the access road to West Acre remained to be secured by condition during the appeal, in my view the "additional information" submitted during the appeal had not significantly altered the overall picture. The second reason for refusal was not well-founded, and I find that the Council's stance on the matter to have amounted to unreasonable behaviour.
8. In order to make an award of costs, however, I need to be satisfied that any unreasonable behaviour resulted in unnecessary or wasted expense. The applicant refers to having been "put through the unnecessary costs of the planning appeal process". While the Council's actions in respect of the second reason for refusal may have amounted to unreasonable behaviour, its actions in respect of the first reason did not. On this basis, it seems likely that the planning application would still have been refused, and the applicant would still have incurred the costs of appeal.

Conclusion

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

M Cryan

Inspector