



Costs Decision

Site visit made on 29 May 2024

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2024

**Costs application in relation to Appeal Ref: APP/Z5630/W/23/3332043
Thetford Lodge, 16 Thetford Road, New Malden, Kingston upon Thames
KT3 5DT**

- 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 L Hasham (CHD Living) for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
 - The appeal was against the refusal of planning permission for conversion and extension of former care home building to create 8 flats.
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Decision

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

Reasons

2. The applicant contends that the Council has acted unreasonably in the following substantive ways listed within the Planning Practice Guidance (PPG)¹ as examples of behaviours that risk an award of costs:
 - 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;
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - refusing planning permission on a planning ground capable of being dealt with by conditions;
 - persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
 - not determining similar cases in a consistent manner
3. The planning application was presented to the New and Old Malden Planning Sub-Committee on 6 December 2022 with a recommendation that permission be granted. The committee resolved to defer determination of the application for several reasons, including raising concerns as to whether sufficient information had been provided. That committee resolution has informed the Council's putative refusal reasons in relation to this appeal.

¹ PPG Paragraph: 049 Reference ID: 16-049-20140306 - Revision date: 06 03 2014

4. The Council is not duty bound to follow the advice of its professional officers, but if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. Very limited evidence has been put forward by the Council to substantiate the harms alleged in their putative refusal reasons. The Council has, therefore, made assertions within its putative refusal reasons that are not supported by an objective analysis. Indeed, the assertions are contrary to the assessment of the Council's professional officers contained within the relevant committee report.
5. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The Council's failure to produce evidence to substantiate their putative refusal reasons constitutes unreasonable behaviour. In the absence of such evidence, it was not reasonable of the Council to prevent and delay the proposed development. Where the Council has found insufficient information has been provided, I have concluded that suitable conditions can be applied to enable the proposed development to go ahead.
6. The Council's costs rebuttal case asserts that the appellant acted unreasonably in submitting an appeal whilst negotiations were ongoing. The evidence before me demonstrates that the Council failed to appropriately co-operate with the applicant and failed to adhere to deadlines in respect of the planning application. The planning application had remained undetermined for a long period of time with no reasonable explanation for the delays. I have not been made aware of any agreed extension of time or planning performance agreement. The appellant, therefore, reasonably exercised their right to appeal given the delays in the processing of the application.
7. Furthermore, the Council relies on its case that the amended plans and additional information should not be accepted as appeal documents for assessment. Notwithstanding this matter, it nevertheless remained necessary for the Council to fully substantiate each putative reason for refusal in its appeal submissions.
8. Overall, therefore, I find that unreasonable behaviour has been clearly demonstrated by the Council and that this has caused the applicant unnecessary expense in the appeal process.

Costs Order

9. 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 the Council of the Royal Borough of Kingston-upon-Thames shall pay to Mr L Hasham (CHD Living) the costs of the appeal proceedings described in the heading of this decision; with such costs to be assessed in the Senior Courts Costs Office if not agreed.

S D Castle

INSPECTOR