



Costs Decision

Site visit made on 20 May 2024

by C Livingstone MA(SocSci) (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2024

Costs application in relation to Appeal Ref: APP/L5810/W/23/3329957 12 Priory Road, Richmond Upon Thames, Kew, TW9 3DF

- 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 Paul Heffner for a full award of costs against the Council of the Borough of Richmond Upon Thames.
 - The appeal was against the refusal of planning permission for the amalgamation of 2 flats into 1 dwelling by removal of internal wall.
-

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 (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. In claiming costs of the appeal, the applicant submits that the Council has acted unreasonably and 'failed to act in a positive and pro-active manner during the planning application process.' Which is contrary to paragraph 38 of the NPPF which states that local planning authorities should approach decisions on development in a positive and creative way. I note that the Council points out in its acknowledgement letter for planning applications that if there are fundamental issues with the proposal a decision may be issued without further contact.
4. It is also asserted that the Council failed to consider the submitted Viability Assessment within the determination process which they consider resulted in a clear procedural failing on the part of the Council.
5. Planning Practice Guidance gives further advice as to when local planning authorities will be at risk of an award being made against them. The examples listed as unreasonable behaviour on procedural grounds include a lack of co-operation with the other party and delay in providing information or other failure to adhere to deadlines. Examples cited as unreasonable behaviour on a substantive basis refer to preventing or delaying development which should clearly be permitted.
6. The Council states that in its assessment of the planning application there was a fundamental objection to the principle of development proposed, due to the resultant loss of housing. As such it did not consider that it would be reasonable to request that the applicant incur additional costs for an

independent review of the submitted Viability Appraisal when the findings would not have altered the outcome.

7. The requirements of Policy LP 36 of the London Borough of Richmond Upon Thames Local Plan 2018 (LP) are clearly detailed within the Policy. Notwithstanding this, the Council did not provide the applicant with details of the cost associated with an independent review of the Viability Appraisal or an explanation of why they considered that it would not be worthwhile in relation to the proposed scheme.
8. While the Council may have acted unreasonably in some respects, it would have refused the application. As the proposal is contrary to the development plan, the proposal does not constitute development that 'should clearly be permitted'. Therefore, if the applicant wished to seek an alternative outcome, they would have needed to submit an appeal in any case.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Livingstone

INSPECTOR