



Costs Decision

Hearing held on 23 October 2024

Site visit made on 24 October 2024

by O S Woodward MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2024

Costs application in relation to Appeal Ref: APP/Z5630/W/24/3347888 Velindre, 48 Galsworthy Road, Kingston upon Thames, KT2 7BS

- 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 Curated Co-Living Ltd for a full award of costs against Royal Borough of Kingston Upon Thames.
 - The appeal was against the refusal of planning permission for demolition of existing 2-storey house, and erection of 7x shared living flats with a total of 49 bedrooms in two separate blocks with associated external communal amenity space, landscaping, and bin and cycle stores.
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Decision

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

The submissions for Curated Co-Living Ltd

2. The costs application was submitted in writing on the basis that the Council behaved unreasonably, both substantively and procedurally, in refusing planning permission in respect to all refusal reasons, other than Reason for Refusal 1 with regard to the loss of family accommodation, with which the proposal is in conflict as conceded by the applicant. An oral submission was also made at the Hearing, but this was substantially the same as the written submission. I have considered both the written and oral evidence in my assessment below.

The response by Royal Borough of Kingston Upon Thames

3. The response was made orally at the Hearing. The Council stated that the application was changed from a minor to a major application after validation but highlights that the applicant has accepted that it is a major application. Fire Strategies, as opposed to Fire Statements, are required for both minor and major developments, as set out in Local Plan policy. The Council does not publish 3rd party representations as a matter of course but does make them available on request. When requested by the applicant, the representations were provided. There has been continuous dialogue with the applicant throughout the application and appeal process. What remains is a difference of opinion. It is within the right of the Council to not accept revised documents and drawings, particularly in this case where the amendments raised other issues and concerns, for example the amended cycle storage is too small to meet policy requirements. All information related to Policy H16 of the London Plan 2021 (the LP) was unilaterally submitted by the applicant and was not

requested by the Council. The Council calls into question the logic of the applicant submitting this information if its case is that Policy H16 does not apply to the proposal. The Council also highlights that it made the applicant aware that it was concerned about the applicability of Policy H16 at pre-application discussions. The Council's position is that the appeal process should not be used to revise the scheme and that instead the applicant should have withdrawn the application and submitted a revised proposal through a new planning application.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, 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. PPG also advises that the behaviour of parties during the time of the planning application can be taken into account in deciding whether unreasonable behaviour has occurred, although the costs themselves can only be awarded in relation to unnecessary or wasted expense at the appeal.

Unreasonable behaviour

5. The proposal is for nearly 1,500 sq m of floorspace and, although not directly comparable to a pure use class C3 scheme, 49 (or 50 at the time of application) bed spaces are proposed. Both these are clearly in excess of the threshold for major development of either 1,000 sq m or 10 dwellings as set out in The Town and Country Planning (Development Management Procedure) (England) Order 2015. Therefore, although the Council initially validated the proposal as a minor application before changing its mind and changing it to a major application, this should not have come as a surprise to the applicant. In addition, the applicant was notified of this change in October 2023, several months ahead of the appeal being lodged. The Council's behaviour was not, therefore, unreasonable in this regard.
6. Throughout the application determination process the Council provided very limited feedback to the applicant. It did not engage in meaningful negotiations or discussions. During the appeal process, the Council's Statement of Case was submitted late, but only by one day and it was reasonably detailed. However, the Statement of Common Ground was extremely short and did not attempt to find any common ground following the decision on the application. I view the lack of meaningful engagement during the application process and failure to actively seek to agree common ground during the appeal process to constitute unreasonable behaviour on behalf of the Council.
7. In February 2024, the Council stated that it would accept the revised drawings. It later changed its mind and refused the proposal based on the original submission. I acknowledge that the Council was not under any obligation to accept the revisions. However, they were relatively minor and were seeking to pro-actively respond to concerns raised by consultees and as arose through the application determination process. They were not of such a scale that I would expect a new application to be required. I view active engagement on such issues, including at least considering the possibility of accepting revised documents, as being a normal and helpful part of the application process. The lack of such engagement constituted unreasonable behaviour on behalf of the Council.

8. Whether or not the Officer's Report breached the requirements of the Local Government Act 1972 with regard to listing relevant background papers did not give rise to any unnecessary or wasted expense during the appeal process. I do not therefore consider this further.

Reason for Refusal 2

9. Whether or not the proposal engaged the requirements of Policy H16 of the LP was a debatable position. As can be seen from my Decision on the appeal, I found that it did not. However, the proposal was very close to a threshold of size that is not fixed in any event by policy, ie 50 bedrooms. It is also for a product which contains some of the elements of Large-Scale Purpose-Built Shared Living (LSPBSL). It was therefore a matter of planning judgment and it was a reasonable approach by the Council to state it considered the proposal to be for LSPBSL and therefore that Policy H16 was engaged. Reason for Refusal 2 was therefore adequately substantiated.

Reason for Refusal 3

10. The applicant had the option to approach the appeal by stating that it believed the proposal did not engage Policy H16 and therefore that affordable housing was not required. It did not need to provide any information in support of a viability position in relation to affordable housing and could have relied upon its in-principle position regarding the lack of applicability of Policy H16 to the proposal. Therefore, any costs in relation to Reason for Refusal 3, or otherwise in relation to Policy H16 of the LP, were not as a result of unreasonable behaviour on behalf of the Council but were instead a tactical decision made by the applicant.

Reason for Refusal 4

11. The proposal is for two buildings, one of which is on land which is currently the rear garden. It would result in a significant change to the character and appearance of the site in comparison to the existing building. Although I have found the proposal to not harm the character and appearance of the area, this is a matter of planning judgment. The Council's reason for refusal provides precise advice on the elements of the proposal which are unacceptable. I do not, therefore, view the Council's behaviour as being unreasonable in respect of Reason for Refusal 4.

Reason for Refusal 5

12. The Council's Statement of Case sets out that it is the proposed building to the rear that would generate the concerns with regard to living conditions. It does not specifically state which neighbouring properties would be affected but only a limited number are proximate to the proposed building. In addition, the nature of the harm is precise because it is specifically stated to be with regard to overlooking, loss of privacy and sense of enclosure. I therefore view Reason for Refusal 5 as being adequately substantiated.

Reason for Refusal 6

13. The Council did not provide an assessment of sunlight or daylight. However, the onus is on the applicant to demonstrate that the proposal would not have unacceptable effects in these respects. It is a reasonable position for the Council to take to state that there had been a failure to demonstrate this in lieu

of a formal sunlight and daylight assessment. I therefore view Reason for Refusal 6 as being adequately substantiated.

Reason for Refusal 7

14. The Council did not constructively engage with the applicant either at the planning application or appeal stage with regard to producing a s106 Planning Agreement. No examples were provided or meaningful advice given despite repeated attempts to engage by the applicant. This showed a lack of co-operation and constitutes unreasonable behaviour. The Council's Statement of Case and the relevant reason for refusal also highlight the failure to provide a parking beat survey as leading to the conclusion that it has not been demonstrated that the proposal would not have an unacceptable impact on highway safety. However, as became clear during the appeal process, there are no suitable opportunities to park on-street within a reasonable walking distance of the appeal site. A parking beat survey is not, therefore, required to demonstrate an acceptable impact on highway safety.
15. I therefore view Reason for Refusal 7 as being inadequately substantiated and that the unreasonable behaviour of the Council has led directly to the costs for the applicant of defending this reason for refusal throughout the appeal process. This includes the extended time required to finalise the Unilateral Undertaking, dated 6 December 2024, because although a s106 Planning Agreement was required to achieve an acceptable effect on highway safety, the Council's lack of co-operation led to an unnecessarily lengthy drafting process for the applicant.

Reason for Refusal 8

16. As I have set out in my Decision on the appeal, the revised drawings were sufficient to resolve the concerns with regard to potential damage to trees. The correct amount of cycle provision is ambiguous given that the proposal does not fall neatly into use classes C3 or C4. However, the area of the rear garden where the cycle parking was proposed is sufficiently large that this issue could be resolved by condition. Alternatively, the Council could have provided definitive advice on the required size of the cycle store. But, it did not do so. Reason for Refusal 8 could, therefore, have been resolved ahead of the appeal process and the Council's unreasonable behaviour therefore led to costs for the applicant in preparing for and defending its case at the appeal in these regards.

Reason for Refusal 9

17. The requirement for a Fire Statement as opposed to a Fire Strategy is clearly set out in Policy D12 of the LP. The need for this should have been clear to the applicant from the time that the proposal was confirmed to be a major development, even without an express request from the Council. Irrespective of the Council's position, a Fire Statement is required to comply with Policy D12. Reason for Refusal 9 was therefore adequately substantiated and the subsequent work required from the applicant at appeal stage to provide the necessary information did not, therefore, relate to unnecessary or wasted expense.

Overall

18. The Council's behaviour was unreasonable because of the failure to meaningfully engage during the course of determining the application, not to at

least consider the revised drawings, and the lack of engagement with the Statement of Common Ground and in general to resolving issues during the appeal process. However, for the reasons set out above, this unreasonable behaviour, whilst touching on all aspects of the appeal, only led to unnecessary or wasted expense at the appeal with regard to the applicant preparing for and defending the case with regard to reasons for refusal 7 and 8.

Costs Order

19. 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 Royal Borough of Kingston Upon Thames shall pay to Curated Co-Living Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurrent in dealing with reasons for refusal 7 and 8; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

O S Woodward
INSPECTOR