
Costs Decision

Site visit made on 6 October 2016

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 December 2016

**Costs application in relation to Appeal Ref: APP/B5480/W/16/3151041
Land adjacent to 67 Corbets Tey Road, Upminster, Essex RM14 2AJ**

- 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 Alan Perry for a full award of costs against the Council of the London Borough of Havering.
 - The appeal was against the refusal of planning permission for erection of 4 no. 1 bedroom flats.
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Decision

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

Reasons

2. Paragraph 30 of the Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and where that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal, and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
 4. The Council's first reason for refusal related to character and appearance. Awards of costs are rarely made where an issue turns on a matter of professional judgement in light of the evidence, such as design and the effect of the proposal on the character or appearance of the surrounding area.
 5. Whilst the planning officer's report found the proposal to be acceptable in this respect, the Council is not duty bound to follow the advice of its professional officers. However, if a contrary decision is reached, the Council must clearly demonstrate why a proposal is unacceptable on planning grounds, and provide clear evidence to substantiate that reasoning. The wording of the reason for refusal is clear, and the Council expands on it in some detail in its Statement of Case. Therefore, whilst I have found in the appellant's favour on this issue in my decision, I consider that the Council has not behaved unreasonably in this regard.
 6. The Council's second reason for refusal related to the lack of a legal agreement to restrict future occupants of the development applying for parking permits.
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With respect to the parking issue, the appellant states that no evidence has been submitted in respect of parking congestion. I have agreed with that position, and found that insufficient justification has been made in respect of the restriction on parking permits for future residents. This measure would therefore not meet the statutory test of necessity. Consequently, I consider that the Council has acted unreasonably in seeking to restrict wider parking impacts arising from the scheme without substantive evidence. The appellant has therefore incurred unnecessary expense in defending this element of the appeal.

7. The Council's third reason for refusal related to the lack of a legal agreement securing contributions towards education infrastructure in the area. As may be seen from my decision, I found that the four proposed residential units would not be suitable for family accommodation, and so would not give rise to additional pressure on school places in the area. Consequently, I concluded that such a contribution towards education infrastructure would not meet the statutory test of necessity. I therefore find that Council has been unreasonable in seeking this contribution, thus involving the appellant in the unnecessary expense of defending this element of the appeal.

Conclusion

8. I find that unreasonable behaviour by the Council, in seeking a contribution towards education and a restriction on the application for parking permits which did not meet the relevant statutory tests, has led to unnecessary and wasted expense, as described by the Planning Practice Guidance, and I therefore conclude that a partial award of costs is justified.

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 London Borough of Havering shall pay to Mr Alan Perry the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal, which related to a restriction on future occupiers applying for parking permits, and the third reason for refusal, which concerned contributions towards education infrastructure.
10. 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Elaine Gray

INSPECTOR