
Costs Decision

Site visit made on 24 May 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 19th June 2017

Costs application in relation to Appeal Ref: APP/D1590/W/17/3168825 88 Pall Mall, Leigh on Sea SS9 1RG

- 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 R Cramer for a full award of costs against Southend-on-Sea Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing building currently used as a gym and the erection of a terrace of three, four bedroom dwelling houses.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises¹ 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. A full award of costs is sought and the application is made on a substantive basis. The applicant contends that the Council acted unreasonably in refusing planning permission, which should have been granted, having regard to local and national planning policy², with the result that unnecessary and wasted expense has been incurred in making the appeal. Planning permission was refused for four reasons concerning the development's effects on: 1) the character and appearance of the area, 2) the living conditions of the occupiers of neighbouring properties; 3) on-street parking in the area; and 4) the living conditions for its occupiers with respect to accessibility and adaptability, having regard to the provisions of regulation M4(2) of the Building Regulations.
4. For the reasons that I have given in the appeal decision the appeal has been dismissed because of the inadequacy of the off-street parking provision and the potential for the development to add to the on-street parking pressure in the area. I therefore consider that the Council's case with respect to the development's effect on parking has substantiated the third reason for refusal. For the purposes of the paragraph 049 of the PPG there was therefore no

¹ PPG Paragraph: 028 Reference ID: 16-028-20140306

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

unreasonable behaviour on the Council's part in raising the third reason for refusal.

5. The first reason for refusal concerns the development's effect on the character and appearance of the area. The development's acceptability or otherwise in this respect concerns a matter of judgement. While I have concluded against the Council on this issue, I consider that the concern raised in this respect was arguable and that the Council's officer report substantiated the reason for refusal. Having regard to the guidance set out in paragraph 049 of the PPG, I consider it was reasonable of the Council to have raised a character and appearance reason for refusal and that the applicant has not incurred unnecessary expense in responding to it.
6. In considering the second reason for refusal, I have found that, on balance, there would be no unacceptable harm to the living conditions of the occupiers of the neighbouring properties. The case advanced by the Council was therefore arguable and accordingly for the purposes of paragraph 049 of the PPG I consider it was reasonable of the Council to have included the third reason for refusal.
7. The fourth reason for refusal alleges conflict with various development plan policies, most notably Policy DM8 of the Southend on Sea Development Management Document of 2015, on the basis of insufficient information being provided to demonstrate compliance with the enhanced accessibility and adaptability requirements of regulation M4(2) of the Building Regulations. In determining the appeal I have concluded that there would be no conflict with Policy DM8. That is because while the PPG³ makes it clear it is acceptable for development plan policies to require new dwellings to be compliant with the enhanced accessibility and adaptability provisions of the Building Regulations, it is for building control bodies, rather than local planning authorities, to enforce compliance with regulation M4(2). The fourth reason for refusal was therefore ill-conceived.
8. The Council's reliance on the fourth reason for refusal was only explained in the briefest of terms in the Council's officer report. In defending the appeal the Council has not expanded upon the alleged conflict with Policy DM8 and it appears to have completely ignored the appellant's extensive evidence on this issue, with it stating 'It is noted that no response has been made in relation [to] the requirement to comply with Part M4(2) of the Building Regulations'. It was incorrect of the Council to state that the appellant has not responded to the misguided fourth reason for refusal.
9. The Council's reliance on the fourth reason for refusal was ill-judged and its appeal case has failed to substantiate this reason for refusal. Having regard to the provisions of paragraphs 028, 030, 032 and 049 (the second bullet point) of the PPG I consider that the Council's reliance on the fourth reason for refusal was unreasonable, resulting in the applicant directly incurring unnecessary and wasted expense in contesting this part of his appeal.

Conclusions

10. For the reasons given above I have found that the first, second and third reasons for refusal were reasonable and that the applicant did not incur

³ PPG Paragraph: 008 Reference ID: 56-008-20160519

unnecessary or wasted expense in responding to them. However, with respect to the fourth reason of refusal I have found that the applicant has incurred unnecessary and wasted expense in responding to this reason for refusal because it was ill-founded and the Council's evidence has not substantiated its inclusion.

11. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's fourth reason of refusal is justified.

Costs Order

12. 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 Southend-on-Sea Borough Council shall pay to Mr R Cramer, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the fourth reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

Grahame Gould

INSPECTOR